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Access to medication in the context of pandemics such as HIV/AIDS

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 2001/33, the Commission on Human Rights recognized that access to medication in the context of pandemics such as HIV/AIDS is a fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest available standard of physical and mental health. The Commission requested the Secretary-General to seek the views of Governments, intergovernmental and non-governmental organizations on the steps they have taken to promote and implement, where appropriate, the resolution. The present report summarizes replies received from States and intergovernmental and non-governmental organizations to the notes verbales and letters sent on 27 August 2001, and is submitted in accordance with resolution 2001/33.

2. Information was received from the Governments of Argentina, Belarus, Brazil, Finland, Georgia, Guatemala, Mexico, New Zealand, Thailand, Tunisia and Zambia. Information was received from the United Nations Secretariat (Department of Economic and Social Affairs), the United Nations Economic Commission for Africa, the International Labour Organization, the Joint United Nations Programme on HIV/AIDS, the United Nations Educational, Scientific and Cultural Organization, the United Nations Population Fund, the World Intellectual Property Organization, the World Trade Organization, and the European Commission. The National Human Rights Commission of France, the National Human Rights Commission of Mexico and the New Zealand Human Rights Commission also provided relevant information. Contributions were received from the following non-governmental organizations: the Council for International Organizations of Medical Sciences, the International Council of AIDS Service Organisations, the International Council of Nurses, and Medecins sans frontières.

II. CONTRIBUTIONS FROM STATES

3. The Government of Argentina emphasized that universal access to antiretroviral treatment is a basic human right of people living with HIV/AIDS, and noted that Argentina is among the few countries in the region with experience in providing such treatment free of charge. It urged that, in the light of the growing number of people living with HIV/AIDS in countries around the world, methods and mechanisms for purchasing and distribution should be reviewed with a view to guaranteeing universal coverage and reducing costs without lowering quality. The Government stressed the need for health services and training to ensure effective care for patients.

4. In Argentina, the National Programme to Combat Human Retroviruses, AIDS and STDs was established in 1992 to promote HIV/AIDS prevention, provide care for people infected with HIV and eliminate all forms of discrimination. Access to antiretroviral treatment was made universally available following the adoption of Act 24455 (1995) and Act No. 24754 (1996). Social welfare bodies are obliged to provide care and medicines to persons living with HIV/AIDS, and benefits for such care are to be covered under compulsory medical health insurance schemes. The Ministry of Health set up a Management Unit in 1997 to purchase and distribute antiretroviral medicines for triple therapy, and to make laboratory control methods available to beneficiaries without social security or private health-care coverage.

In January 2000, the Ministry of Health established an HIV/AIDS and STD Executive Coordinating Unit to coordinate activities, improve efficiency and rationalize resources related to HIV/AIDS and STDs.

5. The Government of Belarus reported the establishment of a National Interdepartmental Council on the Prevention of HIV Infection and Venereal Diseases (RMVS), which is composed of 12 deputy ministers and chaired by the Deputy Prime Minister. The main tasks of the Council are to coordinate prevention efforts; to study the reasons for the spread of HIV and venereal disease infection and to devise effective means of preventing it; to conduct joint awareness-raising efforts on HIV/AIDS and venereal diseases; to propose ways of improving social support for people living with HIV and AIDS, as well as for medical workers; and to promote international cooperation on issues related to HIV/AIDS and venereal diseases. Committees also have been set up in all cities and districts in Belarus to coordinate HIV/AIDS-related work. The Council's decisions provide guidance on HIV/AIDS-related issues to governmental departments and voluntary associations. They also facilitate the establishment of partnerships and encourage other entities to engage in prevention efforts.

6. In Belarus, the State Programme for the Prevention of HIV/AIDS (1997-2000) defines the roles and responsibilities of the various ministries and other State bodies to counter HIV infection. A State Programme for 2001-2005 recently was approved and activities are under way in various departments. The Ministries of Health and Education, for example, have introduced teaching programmes on HIV/AIDS for educational workers attending advanced training courses and students at various levels. The Ministry of Culture is actively engaged in education for the young, including through the organization of various shows and cultural events, mobile exhibitions, and poster and screenplay contests. The Ministry of Defence has organized courses for the prevention of HIV infection, venereal diseases and drug addiction for military personnel. The Ministry of Internal Affairs is conducting HIV prevention campaigns for people attending institutions run by the Penal Correction Committee. With United Nations backing, a pilot project involving preventive intervention among detainees is being introduced and has been in operation at one of the Republic's prisons since April 1999. The Government relies primarily on the media to disseminate information on HIV/AIDS targeting, in particular, the groups most vulnerable to HIV infection such as drug addicts, military personnel, prisoners and homosexual men. The Ministry of Housing and Municipal Services is helping with the public awareness-raising by training staff, distributing public information material and selling condoms. The Ministries of Industry, Transport and Communications, and Trade are engaged in similar efforts. Prevention of mother-to-child HIV transmission has been a part of regular midwifery and gynaecological practice in Belarus since 1997.

7. The Government of Brazil has guaranteed universal and free access to antiretroviral drugs since 1996, and currently provides antiretroviral treatment to those in need through 424 medicine distribution centres all over the country. According to the Government, this policy has prevented over 234,000 hospital admissions, creating a total saving to public funds of about US$ 677 million. In 2000 the number of hospital admissions dropped by 80 per cent in comparison with the number of yearly admissions between 1996 and 1999. Opportunistic infections have showed a significant decline, with tuberculosis in HIV-positive

patients down by 60 per cent, cytomegalovirus infection declined by 54 per cent and Kaposis'arcoma by 38 per cent. The Government reported that in the last six years, the rate of AIDS-related mortality has fallen by 50 per cent.

8. The Government attributes these successes to the availability of low-cost, locally manufactured antiretroviral medicines. Over the past few years the prices of antiretroviral drugs acquired by Brazil's Ministry of Health gradually have fallen, due primarily to the production of these drugs by government laboratories and through price negotiations with exclusive suppliers. As a result of such initiatives, there has been an average price reduction of 72.5 per cent, or eight times higher than the reduction observed in the international market. The policy of price reduction for appropriate drugs has had a significant impact in Brazil: in 2000 Brazil saw both an increase in the number of patients receiving treatment and a 10 per cent cost reduction in comparison with 1999. The Government currently spends US$ 303 million per year on its drug distribution programme, a figure which it claims would read US$ 530 without the price reduction.

9. In its contribution, the Government of Finland emphasized the important role played by an effective and accessible primary health care system on the prevention of the spread of communicable diseases. The Government reported that pharmaceuticals, including drugs for the treatment of opportunistic infections, are free for those infected with HIV in Finland. HIV testing is available in all health care units and several HIV/AIDS counselling units provide anonymous testing. Finland also has promoted access to medication at the international level, through the World Health Organization (WHO) and at international meetings such as the United Nations General Assembly special session on HIV/AIDS. The Ministry of Social Affairs and Health has been active in the fight against communicable diseases in the Baltic region through the framework approved by the prime ministers of the region. The Government noted that its fifth periodic report to the Committee on Economic, Social and Cultural Rights, which will be submitted in June 2005, will include information on the issue of access to medication.

10. The Government of Georgia referred to its second periodic report to the Committee on Economic, Social and Cultural Rights, which contains detailed information on the implementation of the right to the highest attainable standard of mental and physical health. The Government's most recent periodic report to the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child also reflects some of the ways the Government is tackling sexually transmitted diseases, and particularly HIV/AIDS, among children. The Government underscored the significant economic and financial difficulties which limit its full compliance with the provisions of these treaties, but underscored the fact that Georgian legislation contains no provisions that could be used to deny or limit equal access for all people to adequate medical treatment or pharmaceuticals.

11. The Government of Guatemala recalled that the first case of AIDS was reported in 1984 and that by 30 April 2001, a total of 4,010 cases had been reported. It noted, however, that these figures do not reflect the fact that an estimated 50 per cent of cases are unreported. In Guatemala, HIV is passed on primarily by sexual transmission (94 per cent), blood transmission (2 per cent) and vertical transmission (4 per cent), with people living in urban areas at the greatest risk. The rate of HIV infection among women has risen dramatically since the start of the epidemic.

12. According to the Health Code in Guatemala, the Ministry of Health is responsible for evaluating and monitoring action to control sexually transmitted diseases and HIV/AIDS. The Code contains provisions relating to the human rights of persons living with HIV/AIDS and makes it compulsory for the Ministry of Education to include a unit in school curricula from the fifth primary grade on human sexuality, sexually transmitted diseases and HIV/AIDS. The Ministry of Health, in cooperation with other government ministries, civil society organizations, international organizations and UNAIDS, formulated a National STD/HIV/AIDS Strategic Plan for the period 1999-2003. Through the National Health Council, the Ministry of Health also has taken steps to establish a National Unit to Care for Persons Living with HIV/AIDS to develop mother and child prevention programmes, including diagnostic tests; standardize diagnosis systems; offer antiretroviral treatments; provide outpatient medical care; and carry out HIV/AIDS research.

13. The Ministry of Health has established an HIV/AIDS Epidemiological Analysis Commission which monitors the scope and magnitude of the epidemic with a view to providing guidance on initiatives relating to health promotion, prevention and rehabilitation. The Committee on Access to Antiretroviral and HIV Reagent Medicines has also been established to develop strategies for improving the quality, affordability and accessibility of antiretroviral medicines. The Ministry has stepped up efforts, together with sectoral agencies such as the Guatemalan Social Security Institute, to improve access to these medicines and offer care alternatives to persons living with HIV/AIDS. The Government reported that national social security provides for treatment for those who need it, but noted that less than 20 per cent of the population is covered, and many people living with HIV/AIDS therefore are excluded from the system. Treatment and care are provided to people living with HIV/AIDS under several projects around the country, such as the Luis Ángel García Clinic and the Roosevelt Hospital Infectious Diseases Clinic. The Government estimates that a total of 1,216 persons are now receiving antiretroviral treatment in Guatemala.

14. The Government of Mexico reported that the National Centre for the Prevention and Control of HIV/AIDS (CENSIDA) has developed a Programme of Action for the Prevention and Control of HIV/AIDS and Sexually Transmitted Diseases for the period 2001-2006 which reflects the goals and objectives contained in the United Nations General Assembly Declaration of Commitment on HIV/AIDS. The Programme of Action seeks to achieve a better allocation of resources and to increase participation of institutions in the health and other sectors at the federal level in the fight against HIV/AIDS and sexually transmitted infections (STI). It proposes to use national and State accounts to monitor the development of strategic activities under the Programme of Action for the Prevention and Control of HIV/AIDS and STI.

15. In Mexico, the Social Security Institute currently provides antiretroviral medication (ARVs) to 14,000 people living with HIV/AIDS, while the Civil Service Social Security System supplies ARVs to 1,756 people living with HIV/AIDS. The Ministry of Health is providing antiretroviral medication to around 3,000 persons through a combination of federal and State funds. The Government estimates that an equal number of people living with HIV/AIDS are not insured and therefore do not have access to this medication.

16. Article 96 of the General Health Act regulates the conduct of health-related research, including the national production of health products such as antiretroviral medication. However, the Government reported that it has been unable to manufacture these drugs at a lower cost due to patent laws and its obligations under international trade law. Nevertheless, the Ministry of Health recently has entered agreements with laboratories producing antiretroviral medications in order to reduce its cost for the health sector, and to provide coverage for new patients.

17. The Government of New Zealand's response to the AIDS epidemic is based on the following five areas of health promotion, as set out in the Ottawa Charter for Health Promotion: building health public policies, creating supportive social environments, strengthening community action, developing personal skills, and reorienting health services. The Government recognizes the need to acknowledge vulnerable groups, protect and promote their human rights, and tailor specific prevention and care strategies to their needs as part of an effective national strategy to counter HIV and AIDS. In this regard the Government noted that its domestic policies and legislation are consistent with the International Guidelines on HIV/AIDS and Human Rights. Treatment and care are provided in a number of health settings in New Zealand, including general practice, sexual health centres, specialist units in major hospitals, and hospices. Care and support are also available from voluntary groups in many areas, supported by the New Zealand AIDS Foundation.

18. In recommending drugs for subsidy, the Pharmaceutical Management Agency in New Zealand seeks to balance the needs of patients for equitable access to health care with the needs of taxpayers for responsible financial management. The regulatory unit of the Ministry of Health is responsible for applying a framework of controls designed to ensure that benefits of the therapeutic products available in New Zealand outweigh the risks associated with them. Legislation regulating medicines, for example, is designed to manage the risk of avoidable harm associated with the use of medicines, to ensure that medicines meet acceptable standards of safety, quality and efficacy, and to see that information about the selection and safe use of medicines is available to health professionals and consumers. The Government stressed that while access to appropriate affordable treatment is important, effective HIV prevention programmes are more important.

19. The Government of Thailand reported that it has allocated resources, developed personnel training programmes and established a National AIDS Prevention and Control Programme in response to the epidemic. The country currently is impiementing its second five-year plan, the objectives of which are to reduce and control the spread of HIV/AIDS and to lessen its social, economic and health impact on individuals, their families and their communities. The Government pointed to the high priority it places on the issue of access to medication, treatment and services. The new national health policy, "30 baht for all diseases", guarantees care and treatment for opportunistic infections such as tuberculosis and pneumocystis carinii pneumonia (PCP). The Committee and Subcommittee of Pharmaceutical and Medical Service were established to improve the quality and reduce the price of HIV/AIDS medicines. The Government reported that its approach to antiretroviral drugs is based on the recognition that these drugs improve people's health such that they may eventually be able to return to work.

20. With regard to research and development, the Government reported the recent adoption of a plan to standardize and improve the quality of laboratories which study HIV/AIDS and related diseases. Particular attention is being paid to reducing mother-to-child HIV transmission, as well as to exploring new methods for expanding behavioural surveillance to improve adolescent health. The Government underscored the need for more funding to cover medical expenses, in the light of the growing number of people living with HIV and AIDS.

21. The Government of Tunisia noted that the right to health is a key element of its national strategy for promoting human rights. Vaccines and medication for the prevention and treatment of communicable diseases, for example, are available free of charge in all public health facilities as part of the ongoing efforts to improve access to health services. Laws 92/63 and 92/71, regulating the treatment of communicable diseases, emphasize the right of all people to the best possible protection of health without discrimination and provide that people affected by diseases such as HIV/AIDS have the right to free medical treatment and care, which are made available under the national health programme. With regard to HIV/AIDS, medicines to treat opportunistic infections, antiretroviral medication and other products related to triple therapy are available free of charge under the national programme.

22. The Government referred to its National Law No. 2000-84 of 28 August 2000 regarding intellectual property rights and public health which, it noted, comply with Tunisia's obligations under international trade law while guaranteeing respect for human rights. The Government stressed that the promotion and protection of human rights should include access to medication in the broadest sense, including for diseases other than HIV/AIDS.

23. The Government of Zambia reported the near completion of its national policy on HIV/AIDS, STDs and tuberculosis, which addresses issues related to HIV/AIDS and human rights including stigma and discrimination, HIV/AIDS in the workplace, access to drugs and related technologies for people living with HIV/AIDS, improving quality of care in health facilities, improving treatment of opportunistic infections and implementing measures to ensure the availability of drugs and laboratory service, and strengthening prevention as the mainstay in the fight against HIV/AIDS. With regard to the issue of access to medication, the Government noted the development of Clinical Management Guidelines as well as a document to guide the introduction of antiretroviral drugs in Zambia. The Government currently is negotiating with pharmaceutical companies with a view to increasing the availability of medication at a low cost to people living with HIV/AIDS.

III. CONTRIBUTIONS FROM UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS

24. The Department of Economic and Social Affairs of the Secretariat recalled a number of relevant initiatives stemming from the World Summit for Social Development and the twenty-fourth special session of the General Assembly. The promotion of the highest attainable standard of mental and physical health, access for all to primary health care on an equitable and non-discriminatory basis, and the provision of medicines at affordable prices to address pandemics such as HIV/AIDS have been central objectives of the Social Summit process and its five-year review. The Summit determined that communicable diseases constitute a serious health problem in all countries, and that these diseases hinder social development and often

cause poverty and social exclusion. It concluded that the prevention, treatment and control of diseases including tuberculosis, malaria and HIV/AIDS should be given the highest priority, and that social protection systems should be strengthened and expanded, with particular attention to people affected by HIV and AIDS. HIV/AIDS is identified as a major obstacle to achieving social development objectives, particularly poverty eradication, in the Secretary-General's report on the implementation of the outcome of the Summit (A/AC.253/13-E/CN.5/2000/2).

25. The Department drew attention to the recommendations outlined in the outcome document of the Special Session (resolution S-24/2) to improve access to affordable medicines, in particular to address HIV/AIDS. In its resolution the General Assembly encouraged Governments, the international community, the private sector and other actors to strengthen political commitment and efforts at the international and national levels against HIV/AIDS; support arrangements to mobilize commercial enterprises to invest in research aimed at finding affordable remedies for diseases that particularly afflict people in developing countries; recognize the right of everyone to the highest attainable standard of mental and physical health, the importance of access to affordable essential medicines, and the contribution of intellectual property rights to promote research, development and distribution of drugs; and provide support for research and development centres in Africa and the least developed countries on vaccines, medicines and public health. It encouraged the World Health Organization to work with Governments and other international organizations in monitoring and analysing the pharmaceutical and public health implications of relevant international agreements, including trade agreements, with a view to enabling Governments to develop pharmaceutical and health policies and regulatory measures, and to maximize the positive and mitigate the negative impact of those agreements. The Assembly also encouraged UNAIDS and its co-sponsors to support countries most affected by HIV/AIDS in their efforts to promote wider access to quality medication by securing the provision of affordable drugs; implementation of a strong generic drug policy; bulk purchasing; negotiation with pharmaceutical companies; appropriate financing systems; and encouragement of local manufacturing and import practices.

26. The Economic Commission for Africa recalled that the African Consensus and Plan of Action: Leadership to Overcome HIV/AIDS, adopted at the African Development Forum 2000, calls for strong involvement by all stakeholders as well as leadership commitment at personal, community, national, regional and international levels. On the issue of access to medication, the Consensus and Plan of Action calls for a scaling up of resources and systems necessary to ensure that antiretroviral and other essential medicines are made available to the widest possible population, including through the local production of pertinent pharmaceuticals. The Consensus and Plan of Action stresses the need for a continental strategy, in partnership with international donors and pharmaceutical companies, to ensure the availability of affordable antiretroviral drugs. It encourages the rapid implementation of commitments by the International Partnership against AIDS in Africa to bringing antiretrovirals within reach of African people living with HIV/AIDS.

27. The Commission noted that several national workshops have been held as follow-up to the African Development Forum, focusing on the need for political leadership and commitment of sufficient resources at all levels, including through the enforcement of respect for human rights in the context of HIV/AIDS; the provision of drugs to reduce mother-to-child

transmission; and the establishment of intercountry and inter-subregional networking. The Commission plans to monitor the implementation of these, including by ensuring that the Consensus and Plan of Action are kept high on the agenda of meetings of African leaders.

28. The Commission pointed to the meeting of the Organization of African Unity Heads of State and Government held in Abuja in April 2001, which addressed the challenges of HIV/AIDS, tuberculosis and other related infectious diseases in Africa. The objectives of the meeting were to develop strategies to prevent and control the impact of HIV/AIDS on socio-economic development in Africa, and to translate the commitments made by African leaders into social and resource mobilization for prevention, care and treatment, and sustainable programming of primary health care. In adopting the Abuja Declaration at the summit, OAU member States recognized the need to intensify efforts in all areas of research, including traditional medicines and vaccine development; identified AIDS as a state of emergency on the continent and called for a lifting of all tariff and economic barriers to access to funding for AIDS-related activities; resolved to take all necessary measures to ensure that resources are made available from all sources, and that they are efficiently and effectively used; supported the creation of a Global AIDS Fund accessible to all affected countries; undertook to mobilize all resources required for the care, support and treatment of populations affected by HIV/AIDS, tuberculosis and other infectious diseases; and resolved to enact and use appropriate legislation and international trade regulations to ensure the availability of drugs at affordable prices and of technologies for treatment, care and prevention of these diseases. The heads of State and Government committed themselves to develop the potential of traditional medicines in the prevention, care and management of HIV/AIDS and other related infectious diseases, and to support the development of effective affordable, accessible HIV vaccine relevant to Africa.

29. On the issue of trade-related intellectual property rights, the Commission recalled the recommendations of the preparatory meeting to the Fourth WTO Ministerial, held from 26 to 29 June 2001, which stated that the TRIPS Agreement does not prohibit member States from taking measures to provide access to medicines at affordable prices and to promote public health and nutrition.

30. The Commission noted that human development is a priority under the New African Initiative, which calls for increased investment by both African Governments and development partners to build effective health interventions and secure health systems. The Initiative calls also for strengthening Africa's participation in processes aimed at making drugs affordable, including those involving the international pharmaceutical companies and international civil society, and for exploring the use of alternative delivery systems for essential drugs and supplies.

31. In June 2000, the General Conference of the International Labour Office adopted a resolution concerning HIV/AIDS and the world of work, which recognizes that the non-availability and limited access to affordable HIV/AIDS-related drugs and treatments in developing countries has contributed to the spread and impact of the disease in those countries. As a follow-up to the resolution, in June 2001 the ILO published a Code of Practice on HIV/AIDS and the World of Work. The Code provides practical guidance to Governments, employers and workers in the formulation of policies and programmes at national and enterprise levels to combat HIV/AIDS. The Code is based on prevention of the epidemic and protection of the rights of the persons infected and affected by HIV/AIDS.

32. UNAIDS reported on the comprehensive care approach being promoted by the UNAIDS secretariat and its eight co-sponsors. This approach includes voluntary counselling and testing and psychosocial support, prevention and treatment of opportunistic infections, good nutrition, strengthening of health systems, fair and sustainable financing and, where possible, access to antiretroviral drugs. According to UNAIDS, these elements should form part of a broad public health approach to HIV/AIDS, undertaken simultaneously with the further expansion of prevention activities, including the prevention of mother-to-child transmission.

33. The UNAIDS secretariat, in partnership with its co-sponsors, other United Nations partners and the pharmaceutical industry, has strengthened and expanded its programme on accelerating access to HIV/AIDS care, treatment and support. As set out in the May 2000 Joint Statement of Intent, the United Nations-industry partnership was based on a set of principles including unequivocal and ongoing political commitment by national Governments; strengthened national capacity; engagement of all sectors of national society and the global community; efficient, reliable and secure distribution systems; significant additional funding from new national and international sources; and continued investment in research and development by the pharmaceutical industry. Accelerating access has involved dialogue between the United Nations and the pharmaceutical industry to make quality drugs more affordable in developing countries, technical collaboration with countries in the development of national programme capacity to deliver care, treatment and support, as well as consultation with Governments and NGOs through a Contact Group.

34. UNAIDS has been actively involved in facilitating greater access to care and treatment, assisting countries and Governments to identify options to increase care and support, and supporting countries in the implementation of their chosen options. A network of consultants from African and American countries have been appointed and trained to speed up the process of country support. In providing assistance to countries, the United Nations continues to press its broad objective, to enhance progressively the capacity of countries to increase access to, and use of, sustainable, comprehensive and quality HIV/AIDS interventions across the entire spectrum of prevention, treatment and patient care and support, including prevention of perinatal transmission. UNAIDS has also been involved in mobilizing the vastly increased resources needed for care and treatment, in particular supporting consultations on the establishment of the Global AIDS and Health Fund and encouraging the flow of debt relief funds towards HIV/AIDS prevention and care programmes.

35. The World Bank's Multi-Country HIV/AIDS Prevention and Control Programme (MAP) has recently approved a package of International Bank for Reconstruction and Development loans and International Development Association grants for several Caribbean countries. The Bank has agreed that, under certain conditions, parts of these loans may be assigned to the purchase of antiretroviral drugs. Barbados was the first country to meet these conditions and therefore is able to draw on World Bank loan funds to finance access to antiretrovirals. While MAP Phase I objectives in Africa cover capacity-building for HIV/AIDS activities, including the infrastructure to facilitate access to treatment, MAP Phase II will more directly address access in selected countries.

36. UNICEF is a key partner in United Nations efforts to implement programmes for the prevention of mother-to-child transmission of HIV/AIDS (PMCT). As a result of price reductions and donations of antiretroviral drugs, programmes are now fully operational at 79 sites and in two national programmes in 16 countries in Africa, Asia, Central and Eastern Europe and Latin America. As at July 2001, the programmes had reached over 300,000 women: 220,000 women had received counselling, 138,000 have been tested for HIV, 11,400 HIV-positive mothers had been identified and over 4,500 had received antiretroviral therapy.

37. WHO has engaged in a number of initiatives to increase access to care, treatment and support for people living with HIV/AIDS. In May 2001, WHO convened a consultative meeting on the use of antiretroviral drugs in resource-limited settings. The meeting resulted in the establishment of two technical working groups to develop simplified ARV treatment guidelines and create a surveillance network for ARV drug resistance. A second consultation on antiretroviral therapy in November 2001 addressed the merits of different antiretroviral treatment regimens in terms of efficacy, toxicity, ease of use, ease of distribution, ease of monitoring, and likelihood of compliance. Participants at the meeting selected regimens that should be considered first-line regimens in resource-constrained settings. There was consensus that in most resource-constrained settings, where the expertise to manage the toxicity of drugs on an individual basis is weak, toxicity or failure of a first-line regimen should lead to its replacement with an entirely new second-line regimen. The meeting concluded with a series of recommendations, which are now being discussed in terms of their utility to developing countries. While this research is ongoing WHO will continue to support the further introduction of antiretrovirals in developing country settings.

38. Other WHO initiatives which reinforce efforts to increase access to quality HIV/AIDS care, treatment and support include the production of a practical guide on the use of Nevirapine in the prevention of mother-to-child transmission. In association with UNAIDS, UNFPA, UNICEF and the World Bank, WHO has initiated a project designed to ensure the pre-qualification of suppliers of HIV/AIDS-related pharmaceutical products, to set up a model quality-assurance system for procurement of pharmaceuticals, and to set out guidelines on the quality of pharmaceutical products related to HIV/AIDS. A joint WHO-WTO workshop on differential pricing in April 2001 explored the conditions required to bring into effect differential pricing for essential drugs. Further work on this is being pursued in collaboration with the TRIPS Council of the WTO.

39. In April 2001, several pharmaceutical companies participated in a meeting with the United Nations Secretary-General to discuss options for intensifying the joint United Nations-industry contribution to increase access to HIV medicines and treatments. At a subsequent meeting in July, the UNAIDS secretariat and UNAIDS co-sponsors met with industry representatives to discuss progress and future steps in accelerating access. The meeting reviewed progress and highlighted several areas for further attention, including the need for expanded financing and health system development, regional collaboration, and increased affordability of drugs and diagnostics. Industry representatives indicated that they would welcome broadening the partnership to include companies that market generic drugs consistent with international agreements. Meeting participants agreed that intellectual property protection is key to bringing forward urgently needed new medicines, vaccines and diagnostics and the companies continue their efforts to discover and develop these new technologies.

40. The companies involved have since adopted a number of measures to expand access to health care including: (a) continued and accelerated initiatives to make HIV/AIDS-related drugs more affordable to developing countries, particularly in sub-Saharan Africa; (b) enhanced partnerships with qualified non-governmental organizations and appropriate private companies offering health care to employees and local communities; and (c) concerted efforts to provide the necessary training to local health practitioners. Agreements have been reached with some companies to lower prices for groups of least developed countries. Individual industry partners have undertaken a number of initiatives, including through public offers to supply products at no profit, below cost, or free to qualifying countries. Companies have built on existing initiatives and implemented broader partnerships, working with Governments, NGOs and health care organizations in developing countries to improve access to HIV care and treatment. These programmes include efforts to train health care professionals, build health infrastructure and capacity, strengthen the role of NGOs in the continuum of care, implement interventions designed to prevent mother-to-child transmission of HIV and treat other targeted populations.

41. By mid-September 2001, 71 countries had indicated their interest in collaborating with UNAIDS on access to care and support. Twenty-six of these have completed or are in the advanced stages of developing national care and treatment plans, most on the basis of some technical collaboration with the United Nations. Thirteen have reached agreement with manufacturers on significantly reduced drug prices in the context of national plans. Consideration has been given to developing a regional approach to expand the benefits more rapidly, for example through the possibility of bulk purchasing, shared technical assistance and joint resourcing. Regional initiatives involving the development of regional plans for care, treatment and support are well under way in the Caribbean and western and southern Africa, and a first regional meeting on access is to be held this year in South-East Asia.

42. The UNAIDS secretariat noted that there are constraints on increased access to medications, including a low uptake of low-priced antiretrovirals due to limited infrastructure for managing patient care and for providing laboratory support, and limited funding to cover the cost of the drugs, laboratory reagents and other commodities. Companies have not been able to report significant movement of products due to a lack of infrastructure and trained personnel in developing countries, uncertain and inadequate financing for care in the most affected countries, reluctance by some Governments to fund antiretroviral purchase, and high price levels. There are high expectations that the Global AIDS and Health Fund will increase the level of resources available to support a broad care agenda, including for antiretrovirals.

43. UNESCO stressed the importance of ensuring access to medication for all people living with HIV/AIDS, but noted that there is a considerable lack of clarity as to the means for providing available medication to those in need. UNESCO further noted that people living with HIV and AIDS must be provided with appropriate information and guidance on available medication and technologies in order to make informed decisions regarding their medical treatment and care. UNESCO underscored the need to support and advance efforts at prevention through education to stop the further spread of HIV.

44. UNFPA reported on its continued efforts towards the prevention of HIV transmission, particularly for young people and mothers, through comprehensive programmes to supply condoms and the promotion of gender equity, equality and non-discrimination of those infected

with or affected by the epidemic. Through an accelerated access-to-drugs initiative with UNAIDS, UNICEF and WHO, UNFPA strives to (a) create standardized pre-qualification criteria for pharmaceuticals and medical technologies; (b) create a list of reliable suppliers of these products for use by international organizations; (c) offer procurement services to those in need; and (d) lend UNFPA experience and procurement expertise to the process of negotiating with the big pharmaceutical companies to obtain price reductions. UNFPA also works with other UNAIDS co-sponsors through the United Nations Theme Group on HIV/AIDS towards the prevention of mother-to-child transmission, including with regard to access to quality preventive commodities, access to antiretrovirals, and screening for and treatment of STIs in pregnant women. In relation to supply of commodities and logistics management, UNFPA has partnered with other United Nations agencies, Governments, donors, NGOs and private sector entities to develop and implement the Reproductive Health Commodities Securities Strategy to improve reproductive health by improving the capacity of national programmes in developing countries to manage key areas of reproductive health commodity supply. UNFPA pays particular attention in its work to the vulnerability of women and girls to HIV infection, and supports partnerships to monitor violations of the reproductive rights of women and girls.

45. WIPO reported that it is working with WHO to improve collaboration to address issues related to intellectual property and health, particularly with regard to pandemics such as HIV/AIDS.

46. The World Trade Organization reported the adoption, at the Fourth Session of the WTO Ministerial Conference in November 2001, of a Declaration on the TRIPS Agreement and Public Health. This Declaration is designed to respond to the concerns that have been expressed about the possible implications of the TRIPS Agreement for access to drugs. The Declaration emphasizes that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health, and reaffirms the right of Members to use to the full the provisions of the TRIPS Agreement which provide flexibility for this purpose. Second, the Declaration makes it clear that the TRIPS Agreement should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health. This provision gives important guidance to both individual Members and, in the event of disputes, WTO dispute settlement bodies. Third, while maintaining Members' commitments in the TRIPS Agreement, the Declaration includes a number of important clarifications regarding the flexibilities available in the Agreement, in particular compulsory licensing and parallel importation. In addition, the Declaration provides for an extension until 2016 of the transition period for least-developed countries in regard to the protection and enforcement of patents and undisclosed information with respect to pharmaceutical products. With regard to the ability of countries with limited manufacturing capacities to make effective use of compulsory licensing, the Declaration recognizes the problem and instructs the WTO Council for TRIPS to find a solution before the end of 2002.

IV. CONTRIBUTION FROM THE EUROPEAN COMMISSION

47. The European Commission noted the toll that HIV/AIDS and other communicable diseases take on human development. In this regard it noted that the main objective of EC development policy, as set out in COM (2000)212 of 26 April 2000, is to foster sustainable development with a view to eradicating poverty in developing countries and to integrating them

into the world economy. A new policy framework was adopted in September 2000 on "accelerated action targeted at major communicable diseases within the context of poverty reduction" (COM 2000/585 of 20 September 2000), followed by the adoption of a five-year Programme of Action (COM 2001/96) on 21 February 2001. The Programme focuses on three main goals: maximizing the impact of existing interventions, increasing the affordability of key pharmaceuticals, and increasing investment in research and development of specific global public goods. In its Programme of Action, the Commission announced that it would work towards the introduction of tiered pricing as the norm for the poorest developing countries, as a means of ensuring access to affordable medicines. The Commission undertook also to examine the effects of factors other than the net import price, such as tariffs, taxes, and importation, distribution and local registration fees, on consumer prices in developing countries.

48. In parallel to these initiatives, the Commission also has promoted discussions within WTO, WIPO and WHO to address the relationship between the TRIPS Agreement and public health protection. The Commission has played an important role in the establishment of the Global AIDS and Health Fund and, in July 2001, hosted a meeting of stakeholders which led to the establishment of a transitional working group and a technical support secretariat. The EC has pledged an initial 120 million euros to the Fund. The Commission reported that it has taken steps to increase spending on its Research Framework programme, which currently contains 130 million euros for research on HIV, malaria and tuberculosis. The EC has begun to fund research on microbicides and new vaccines for HIV. Steps have been taken also to set up a body, the European Clinical Trials Platform, to increase the number and efficiency of testing in developing countries for new medical technologies and drugs. In a parallel initiative, more support is being given to the African testing network, such as the African Malaria Testing Network. These projects associate researchers from the South and North which, according to the Commission, promotes the sharing of intellectual property.

V. CONTRIBUTIONS FROM NATIONAL HUMAN RIGHTS INSTITUTIONS

49. The National Human Rights Commission of France reported that it is taking steps to implement resolution 2001/33 and will keep the Commission informed of its activities.

50. In 1995, the National Human Rights Commission of Mexico set up a Programme on the Disabled, Persons with HIV/AIDS and the Elderly, which is run by a working group comprising staff of the Complaints Bureau, the Inspectorates-General and the Executive and Technical Secretariats. The working group's tasks are to address complaints from persons infected with or affected by HIV/AIDS; to change negative attitudes associated with HIV/AIDS; and to carry out studies in order to increase knowledge and awareness of HIV and AIDS among civil servants and society as a whole. The Commission noted that the majority of complaints it receives relate to the absence or inadequacy of public health care; violations of the rights of people living with HIV and AIDS; medical negligence; denial of medical care; failure to notify a person of their HIV/AIDS status; denial of social security benefits; and wrongful disclosure of an HIV-positive or AIDS condition. On the basis of these complaints, the Commission has made recommendations related to the treatment of HIV-positive prisoners, in particular to ensure that inmates and staff are informed about programmes of prevention, detection, care and treatment of HIV/AIDS; voluntary, confidential HIV testing for prison inmates; appropriate medical care and

treatment; and appropriate training for medical staff. In July 2000, the Commission entered an agreement regarding cooperation with the National Medical Arbitration Commission to establish mechanisms for cooperation to enhance the care given to users of public health services.

51. As a result of these activities, the Commission has raised awareness of the need to respect the human rights of people living with HIV/AIDS; helped to improve the situation of those affected by HIV held in detention; fostered communication between the Commission and the National Centre for the Prevention and Control of HIV/AIDS; promoted an environment which discourages discrimination and exclusion of people living with HIV/AIDS; and helped to change negative attitudes towards people living with HIV/AIDS while seeking a social commitment in the struggle to halt the spread of HIV and prevent the stigmatization of its sufferers. The Commission highlighted several remaining challenges including limited resources for HIV treatment and care, and the persistence in Mexico of certain attitudes towards sex which preclude an open discussion of the issues surrounding HIV/AIDS.

52. The New Zealand Human Rights Commission drew attention to the prohibited grounds of discrimination in New Zealand's Human Rights Act (1993), including "the presence in the body of organisms capable of causing illness", which effectively guarantees to people living with HIV/AIDS equal access to medication. The Commission drew attention to the fact that, unlike many countries, New Zealand can afford to maintain a reasonable degree of access to new treatments and technologies, and expressed its support for international efforts to improve access to medication for pandemics such as HIV/AIDS. The Commission noted, however, that investment in vaccine research lags behind investment in the development of antiretroviral drugs and medication for the treatment of opportunistic infections, and cautioned against the pursuit of improved access to treatment at the expense of efforts to develop preventive technologies including vaccines.

VI. CONTRIBUTIONS FROM NON-GOVERNMENTAL ORGANIZATIONS

53. The International Council of AIDS Service Organizations (ICASO) recalled the International Guidelines on HIV/AIDS and Human Rights, which provide guidance for Member States, United Nations system and regional intergovernmental bodies, and non-governmental organizations on a comprehensive framework for policy and law reform to limit the spread of HIV and reduce the impact of HIV and AIDS. ICASO requested the Commission on Human Rights to take further steps toward the implementation and monitoring of compliance by Governments with the Guidelines.

54. ICASO noted that access to basic primary care, including affordable medicines, should be guaranteed at the local level and suggested that guidelines should be developed to ensure reliable and effective distribution of such care. ICASO recalled that inequities have long existed between developing and developed countries in access to treatment for diseases including tuberculosis and malaria, and noted that advances in health care in developed countries have had little effect on what is available to the developing world.

55. According to ICASO, the HIV/AIDS pandemic has served to sharpen international awareness of these disparities. Attention is now being paid to areas such as essential drugs, infrastructures and service delivery, human rights and appropriate health technologies. ICASO recently conducted research to assess country responses in improving access to HIV/AIDS treatment within the framework of the International Guidelines on HIV/AIDS and Human Rights, and specifically on how civil society has participated in the implementation of guideline 6 regarding the provision of safe, effective and affordable medication. ICASO called for the advancement of the discussion on infrastructure issues related to HIV/AIDS care and treatment, and for a strengthening of community-based response to the epidemic. ICASO suggested the need for regular reporting on the status of HIV/AIDS treatment throughout the world and asked that the United Nations lead the process of designing and monitoring these reports, in close consultation with community groups around the world.

56. In its contribution, the International Council of Nurses (ICN) voiced its support for a human rights approach to health issues, including through increased access to medicines for people living with HIV/AIDS. It drew attention to its efforts to lobby United Nations agencies and member States to provide essential services, access to essential medicines, and increased access to care and support for people living with HIV and AIDS. The ICN, in partnership with UNAIDS and WHO, has developed Fact Sheets on HIV/AIDS for Nurses and Midwives which promote access to antiretroviral drugs for people living with HIV/AIDS. ICN also has developed a Fact Sheet on Mobilizing Nurses for HIV/AIDS Prevention and Care and Guidelines for Reducing the Impact of HIV/AIDS on Nursing and Midwifery Personnel.

57. The Council for International Organizations of Medical Sciences reported two initiatives relevant to the question of access to medication. The Council currently is revising its 1993 International Ethical Guidelines for Biomedical Research Involving Human Subjects. It also has initiated a project on pharmacogenetics and pharmacoeconomics.

58. Médecins sans frontières (MSF) noted that one third of the world's population does not have access to essential, life-saving drugs. MSF's Campaign for Access to Essential Medicines was launched in 1999 in an effort to find long-term, sustainable solutions to this problem. The Campaign is pushing to lower the prices of existing medicines in developing countries, to bring abandoned drugs back into production, to stimulate research and development for neglected diseases that primarily affect the poor, and to overcome other barriers to access.

59. MSF supports a combination of policies to lower drug prices on a sustainable basis, including by encouraging competition with generics, voluntary discounts on branded drugs, global procurement and local production. MSF is also pushing for increased research into neglected diseases - such as tuberculosis, malaria, sleeping sickness and leishmaniasis - through increased funding, investing in research and development capability in developing countries, and supporting alternative models for research and development. To address the issue of abandoned drugs, MSF is calling on companies and Governments to find solutions to bring unprofitable but medically necessary drugs back into production. MSF is also supporting developing countries in codifying into law the "safeguards" that are allowed under international trade rules in order to protect access to medicines.

VII. CONCLUSIONS

60. The urgent need to improve access to prevention, treatment and care for people living with HIV/AIDS is clear. An estimated 40 million people are now living with HIV around the world. Around 15,000 people are newly infected with the virus every single day. The significantly different survival rates for people living with HIV/AIDS in rich versus poor countries and communities is a direct result of unequal access to affordable treatment and adequate health services. Mother-to-child transmission continues to spread, particularly in developing countries, despite the availability of drugs to reduce this risk. For the vast majority of people living with HIV and AIDS, life-saving antiretroviral medication remains inaccessible.

61. International and national resolve to ensure effective HIV/AIDS prevention, treatment and care is growing. Many States have committed themselves, at the national level, to improving care, support and treatment and to ensure access to affordable medication for those infected with and affected by HIV/AIDS. States have pledged, at the United Nations General Assembly special session on HIV/AIDS, to develop national strategies to strengthen health-care systems and address factors affecting the provision of HIV-related drugs, including affordability and pricing. They have agreed, at the World Conference against Racism in Durban, to strengthen national mechanisms to promote and protect the human rights of victims of racism who are infected, or presumably infected, with HIV, and to take concrete measures to ensure access to medication and treatment. By adopting the Declaration on the TRIPS Agreement and Public Health, WTO member States have sent an important signal regarding the need to balance intellectual property rights against public health priorities, such as HIV/AIDS, for developing countries. These important steps must be translated into effective action towards realizing the human rights, and the right to health in particular, of the children, women and men living with HIV and AIDS around the world.

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Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Access to medication in the context of pandemics such as HIV/AIDS

Report of the Secretary-General

Addendum

I. INTRODUCTION

The report of the Secretary-General contained in document E/CN.4/2002/52 was submitted to the current session of the Commission on Human Rights in accordance with Commission resolution 2001/33. In addition to the replies reflected in the report, replies were received from the Governments of Colombia and Cuba. These are summarized below.

II. CONTRIBUTIONS FROM STATES

A. Cuba

1. The Government of Cuba recalls the importance it attaches to combating HIV/AIDS and its firm commitment to ensuring treatment is available, as enjoyment of the highest attainable standard of physical and mental health is a fundamental human right. The Government reports that so far 3,531 cases of infection have been detected in Cuba and that the

prevalence rate is 0.03 per cent, one of the lowest in the world. The pandemic has been contained thanks to a programme guaranteeing comprehensive care for carriers and those who are ill with the disease, free antiretroviral treatment for all those who are ill, specialized medical centres and non-discriminatory social integration of those infected. Preventive measures include the provision of access to safe blood, guaranteed voluntary testing for all pregnant women and antiretroviral treatment for seropositive persons - thanks to which the mother-to-child transmission rate has been at zero since 1997, and an educational programme that includes sex education in schools and information campaigns for vulnerable groups.

2. The Government of Cuba reiterates its belief that for an international strategy against HIV/AIDS to be effective, vital medicines should not be protected by patents that limit patients' access to them, the external debt of the poorest countries should be cancelled and military budgets should be cut to free resources for the fund set up by the United Nations. Economic inequalities at the international level facilitate the rapid and uneven spread of the pandemic.

3. The Cuban Government reiterates its readiness to take part in triangular cooperation programmes in which it could make available, in particular, thousands of doctors and other experts, who could even set up faculties of medicine, and the necessary equipment. If the Joint United Nations Programme on HIV/AIDS and countries with more resources could finance the necessary equipment and materials, the Government could cover the cost of the specialist staff.

B. Colombia

4. The Government of Colombia replies that the Disease Prevention and Control Group of the Colombian Ministry of Health has studied the text of the resolution and found that, from its viewpoint, the text is reasonable and to the country's advantage.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing

Report of the Secretary-General submitted in accordance with Commission resolution 2001/34

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Introduction

1. In its resolution 2001/34, the Commission on Human Rights requested the Secretary-General to report to the Commission at its fifty-eighth session on the implementation of the present resolution. To this end, a note verbale was sent to States on 17 September 2001, requesting information that would be relevant to the report. As of 14 December 2001, information was received from the Governments of Belarus, Canada, Croatia, Fiji, Georgia, Guatemala, Lebanon, Mexico, Qatar, Spain and Tunisia.

2. Similarly, letters requesting inputs were sent to the regional and international financial institutions on 30 August 2001, and to relevant United Nations bodies, funds and programmes on 31 August 2001. Information was received from the following United Nations bodies, funds and programmes: Department of Economic and Social Affairs, United Nations Centre for Human Settlements (UNCHS-Habitat), Economic and Social Commission for Asia and the Pacific (ESCAP), Economic Commission for Latin America and the Caribbean (ECLAC), Economic and Social Commission for Western Asia (ESCWA), United Nations Development Programme (UNDP), United Nations Development Fund for Women (UNIFEM), World Food Programme (WFP). The following specialized agencies also sent information: International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO). The following regional and international financial institutions provided information: International Monetary Fund (IMF), African Development Bank (ADB) and Inter-American Development Bank (IDB). The United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) indicated that they had no substantive inputs to offer.

3. The present report summarizes replies received from Governments, international and regional financial institutions as well as relevant United Nations agencies and bodies, and is submitted in accordance with resolution 2001/34. The originals, in the languages of submission, are available at the Office of the High Commissioner for Human Rights for consultation.

4. The report also contains information on the work of the treaty bodies, other United Nations human rights mechanisms and the Office of the High Commissioner for Human Rights (OHCHR) relevant to the resolution.

I. REPLIES FROM GOVERNMENTS

5. Replies received from Governments appear below in summary form, categorized into four sections, each corresponding to specific provisions of the resolution, namely: (a) general legislative framework, policies and measures (paragraph 4 of the resolution); (b) transformation of customs and traditions that discriminate against women (para. 6); (c) information and education (para. 7); and (d) access to credit (para. 8).

6. In addition to replies from Governments to the note verbale, summaries provided by UNCHS (Habitat) of the national reports submitted by countries to the special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda (Istanbul +5) held in New York in June 2001 are also included under this section as relevant to the purpose of this report.[1]

A. General legislative framework, policies and measures

7. Belarus reported that, under article 23 of the Republic of Belarus Marriage and Family Code currently in force, spouses have equal opportunities to own, use and manage property acquired by them during their marriage, whichever of the spouses it was acquired for, or to whichever or by whichever of the spouses the necessary funds were provided. Equal rights to jointly acquired property are also enjoyed in the case where one of the spouses during the marriage has been occupied with housekeeping or looking after the children, or for any other valid reason has had no independent earnings (income), unless stipulated otherwise in the contract of marriage.

8. Canada reported significant progress towards the goal of women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing. In addition to the Canadian Charter of Rights and Freedoms, which prohibits discrimination in a number of areas, including in matters associated with housing, more explicit protection against prejudicial treatment in relation to housing is found in provincial human rights codes, which prohibit discrimination on such grounds as race, sex, marital status and receipt of public assistance. Provincial human rights commissions, along with community-based advocacy organizations, provide formal mechanisms and assist victims of discrimination in pursuing recourse. Although there are no legal or institutional impediments to home or land ownership in Canada, women can face socio-economic impediments to home and land ownership. For example ownership of land in Canada is influenced by the cost of land relative to household incomes; and for women home ownership is more closely related to family status than is the case for men. Canadian responses include both housing-specific initiatives, and efforts to address the underlying social causes. A number of initiatives have been undertaken to increase access to affordable housing and all federal housing programmes are available to women. Canada also recognizes that issues facing homeless women can differ significantly from those of men, and research efforts in this area are taking this into account.

9. In terms of international cooperation, supporting women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing are key issues that are addressed in many of the Canadian International Development Agency's (CIDA) policies. Gender equality is an integral part of all of the CIDA policies, programmes and projects. The three objectives of CIDA's Policy on Gender Equality are: (a) to advance women's equal participation with men as decision-makers in shaping the sustainable development of their societies; (b) to support women and girls in the realization of their full human rights; and (c) to reduce gender inequalities in access to and control over the resources and benefits of development. The implementation of CIDA's Policy on Human Rights, Democratization and Good Governance includes initiatives which address human rights education and law reform, in relation to gender equality and land rights.

10. Croatia reported that its Constitution expressly states that gender equality is one of its fundamental principles. This principle of equality, together with the provision guaranteeing the inviolability of ownership and succession rights, is elaborated through laws such as the Succession Act, and the Act on Ownership and Other Proprietary Rights. Accordingly, there are

no laws in the Republic of Croatia allowing discrimination against women as to ownership rights, the right to housing, succession rights, the right to manage one's own property or the right to obtain credit and capital.

11. Fiji reported that women's limited access to land and housing is due more to direct and indirect discrimination based on social norms than on legislation. The Constitution Amendment Act of 1997 protects the equality of women's and men's rights before the law (art. 38), and prohibits unfair direct and indirect discrimination. Its article 44 (1) guarantees provisions for programmes to "achieve for all groups or categories of groups who are disadvantaged effective equality of access to ... (b) land and housing". Legislation such as the Married Women's Property Act codifies married women's rights to hold property in their own name and their right to contract.

12. The Government of Fiji has also undertaken several steps relevant to the provisions of the resolution, including: (a) adoption of the 10-year Women's National Plan of Action; (b) creation of the Ministry of Women, Social Welfare and Poverty Alleviation; and (c) incorporation of gender and development by the Ministry of Finance and National Planning in its Strategic Development Plan 2002-2004, which includes: the advancement of women and gender equality, ensuring non-discrimination before the law, legal system and practice; advisory and marketing assistance; ensuring women's accessibility and full participation in power structures and decision-making bodies; and promoting the prevention and elimination of violence against women.

13. Georgia reported that the right to inherit and own property is recognized and guaranteed under the Constitution. In accordance with the Constitution, every human being is equal before the law regardless of his/her sex or other status, and the citizens of Georgia are equal in social, economic, cultural and political life. Women in Georgia enjoy their human rights and freedoms on an equal footing with men, including the right to property that the Civil Code provides for.

14. In terms of its international obligations, Georgia places importance on its compliance with reporting mechanisms to the treaty bodies under the respective United Nations human rights instruments. In addition, Georgia is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and is currently in the process of ratifying its Protocol No. 1, which provides for, in particular, the right to property. At the same time, Georgia mentioned that the right to property, as well as other rights and freedoms, could only be promoted and protected adequately provided that its territorial integrity is restored.

15. Guatemala provided extensive information on legislative and policy measures adopted with regard to the promotion of access to land and to adequate housing. Its Constitution enshrines the right of all persons to private property, as well as special land rights for indigenous groups. In 1998, reforms were introduced into the Civil Code on the rights of working women with regard to common property, recognizing for each spouse the right to dispose of property held in his/her own name. The legislation setting up a "Land Fund" specifically mentions that eligibility to benefit from the Fund is extended to both men and women, and property titles are issued in the names of both spouses. The 1999 law "Dignity and Integral Promotion of Women" sets out operational guidelines to promote equal opportunities for women. Discussions are currently under way in the Government as to the need to streamline and unify several laws that

cover different dimensions of the right to land and housing and their limitations. Guatemala also pointed to the lack of statistics on the extent to which women benefit from any of the legal measures adopted. It reported that no agricultural census had been conducted since the 1970s, and that there were no special surveys providing information on the distribution of land property.

16. Lebanon replied that its Constitution recognizes the rights of women to own land and to have a place to live in dignity. As a founding and active Member of the United Nations, it fully respects its obligations under the Universal Declaration of Human Rights. All its citizens are equal before the law and have the same rights and duties without any distinction or discrimination.

17. Mexico replied that women's capacity to acquire, administer and inherit property, including cultivable land, on equal terms with men is recognized by law. A new Land Law was passed in 1992 coinciding with the amendment of article 27 of the Constitution on land ownership. This new Law takes account of the change in the property regime and recognizes *ejido* (communal land ownership) as a legal entity, thereby regularizing the land tenure through the Land Certification Programme (PROCEDE). In January 1998, 21 per cent of the people covered by PROCEDE were women, of whom 53 per cent were *ejido* members, 10 per cent were owners and 37 per cent were residents. The new Land Law reformed the already existing women's agro-industrial unit (UAIM), following up on the commitment to set aside an area, located preferably in the better lands adjoining the urbanization zone, in order to establish farms or rural industries for the benefit of women over 16 years of age and where facilities to provide services and protection specifically for rural women can be grouped together. The new law extended this right to all women, whereas the previous legislation had limited it to women who were not *ejido* members.

18. With regard to housing, the Federal District Housing Law enacted in March 2000 was a major step forward in the field of legislation, providing for all inhabitants the right to proper and decent housing. The Law authorizes the government of the Federal District to establish a set of mechanisms and measures to secure and allocate funding for housing programmes through a Housing Institute of the Federal District.

19. Mexico also reported that it has recently amended various provisions of the Civil Code for the Federal District in Ordinary Matters and for the Whole Republic in Federal Matters, with a view to providing greater protection for women as regards the family property.

20. Spain replied that the principle of non-discrimination based on gender is enshrined in its Constitution, and that national laws guarantee the equality of rights of men and women to own, have access to and control property, land and housing. However, it recognized that women are still facing impediments due to prevailing social stereotypes and the feminization of poverty, which are creating increasingly difficult conditions for women in terms of their access to productive resources and to adequate housing.

21. Qatar replied that its Constitution guarantees the equality of men and women and that women have the right to own and inherit property. The laws and norms adopted in Qatar give utmost importance to the Qatari family and grant the right to adequate housing to all categories of society. The Government provides adequate houses for civil servants as well as social

housing for lower-income groups of society. The Government further provides land free of charge to construct housing, and provides adequate credit. Housing, electricity and water are also provided free of charge to elderly persons. There are many other advantages for Qatari families in which men and women are equal partners in terms of benefiting from and having access to them.

22. Tunisia reported that its legislation grants women, whatever their civil status and on equal terms with men, the right to conclude contracts in their own name, to dispose of their property or serve as the administrator thereof, and to institute proceedings before any court, including the administrative tribunals. In order to encourage access to property by married women, the Tunisian legislature promulgated Act No. 89-91 on 9 November 1998 regulating the regime of the joint estate of husband and wife in accordance with the principles of shared responsibility and partnership for couples, as stipulated in new article 23 of the Personal Status Code, and as an exception to the legal regime based on the principle of the separation of property owned by married couples. Under this Act, the regime of the joint estate is an optional regime and does not derogate from the procedure of succession.

23. According to the national reports on Istanbul +5 collected by UNCHS (Habitat), several other countries have undertaken legislative and administrative reforms to address the issue of equal access to land, property and housing:

(a) In Austria, a separate institution dealing with women-specific planning was established in 1998, anchoring the needs of women in a municipal institutional context. Measures include a focus on equal treatment of men and women, "women-friendly" urban planning, security and "women-friendly" housing;

(b) In Burkina Faso, article 57 of Decree No. 97-054/PRES/PM/MEF of 6 February 1997 recognizes equal access to land and property without any discrimination based on sex or matrimonial status;

(c) In Ethiopia, there are no impediments to women or any other particular group to owning or renting land, or taking mortgages in their own names;

(d) The laws in Iraq ensure that every citizen has access (at a symbolic cost which is affordable to low-income groups) to a plot of serviced land ready for construction without any kind of discrimination as to ethnic origin, religion, etc. Women have equal rights to property with men;

(e) In Rwanda, law No. 22/99 providing the same rights to both women and men to inherit was passed on 12 November 1999;

(f) In the United Republic of Tanzania, the Land Act of 1998 recognizes the right of every adult woman to acquire, hold, use, deal with and transmit land to the same extent and subject to the same restrictions as men;

(g) In 1998, Uganda enacted a new land law to operationalize the 1995 constitutional reforms. Article 31 (10) of the Constitution provides that men and women are entitled to equal rights in marriage, during marriage and on its dissolution. The new land act aims at ensuring gender equality in respect of access to land, as well as the protection of the rights of disadvantaged groups in general;

(h) Housing policy in Venezuela gives priority to low-income households, representing about 90 per cent of the national population. The Housing Policy also strives for equity and offers better opportunities for access to housing for the most vulnerable segments of society.

B. Transformation of customs and traditions that discriminate against women

24. Canada reported that some tracts of its land have been set apart for the sole use and benefit of members of the "First Nations".[2] The Indian Act provides rules as to who can use, occupy and possess such land, and no one can acquire a right to use, occupy or possess such land except in accordance with the Act. Because of the special tenure system on such reserve lands, First Nations women have raised concerns about their human rights under the Indian Act, including the lack of a mechanism for the division of matrimonial real property upon marital breakdown. Only provincial and territorial legislation can deal with the division of matrimonial real property. Where real property is situated on reserve lands, Supreme Court of Canada case law has established that while a court may take the assets of the matrimonial home and land into consideration and provide compensation, the court cannot deal directly with them and divide the assets. Similar limitations apply to the ability of the court to award exclusive possession or occupancy of the matrimonial home when it is located on reserve lands. In 1999, a sectoral self-government legislation, the First Nations Lands Management Act, was passed that included provisions dealing with the division of matrimonial real property on reserve in situations of marital breakdown. This legislation recognizes that it is the First Nation community that is best positioned to develop its own rules and procedures in respect to matrimonial real property.

25. Fiji reported that on 24 January 2000, it notified the Secretary-General of the United Nations that it had decided to withdraw its reservations on articles 5 (a) and 9 of the Convention on the Elimination of All Forms of Discrimination against Women, which it had based on "cultural obstacles". This came as a result of its amendment of article 38 of the Constitution on equality, especially its provisions (8) to (10) with regard to land, which are read in conjunction with articles 185 and 186 on customary rights and traditions. Furthermore, the Fiji Law Reform Commission, in its Family Law Reforms Report 2000, recommended reforms that essentially will improve women's capacity to own an equitable share of the matrimonial property upon divorce. Likewise, where inalienable native mataqali-owned land is concerned, a proposed compensatory formula will ensure that the woman sustains no loss in the distribution of family property.

26. Guatemala reported that, traditionally, women have enjoyed limited access to land, whether as owners, or as co-owners in the case of married women, under the patriarchal system in indigenous and non-indigenous groups. Given the structural basis of such exclusion, the policies and measures adopted have not produced significant changes. Gender disparity is

evident among agricultural workers, where the number of women owning or leasing land is significantly lower than that of men. The Government is facing great difficulties in addressing the need to establish clear titles to land ownership. The Land Fund legislation calls for the participation of women, both individually and through organizations, in the Fund's projects. The legal aid unit set to assist in resolving legal conflicts over land property also promotes the participation of women in the defence of their rights. About 10 per cent of beneficiaries of land reform distribution are women. The "Defensoria" for Indigenous Women can intervene in land registration cases. Proposals have been made to disaggregate data on female-headed households among those that benefit from the Land Fund.

27. Tunisia reported that the call for female emancipation in its country dates back to the beginning of the twentieth century. Just after independence, the 1956 Personal Status Code abolished polygamy, instituted official civil marriage and legal divorce, and reorganized the family on the basis of the equality of both spouses before the law. Its Constitution, promulgated on 1 June 1959, provides for the equality of all citizens before the law, and also stipulates that the right to property is guaranteed and is exercised within the limits established by the law. Subsequent laws have progressively established the fundamental rights of women in all fields, in particular with regard to ownership of, access to and control over land, and the equal rights to own property and to adequate housing. The advancement of women's rights today is a fundamental dimension of State policy, which stems from a cultural choice aimed at ensuring that women, as human beings and full citizens, enjoy the individual right to human dignity and the conditions for its realization.

C. Information and education

28. Guatemala provided an example of a programme to support rural women that included the participation of women in training schools, a scholarship programme for advanced study, and work training initiatives. A number of other activities promote education for rural women and support for women's organizations. Training activities for women include information on the rights of working women. A gender approach has been integrated in land registration programmes by including women among the technical field staff and including gender units in related professional and technical training activities. In many cases, non-governmental groups established to defend the rights of rural and indigenous women have set up microcredit initiatives or provided support to enable female-headed households to benefit from the Land Fund activities and those dealing with land tenure for indigenous groups, and helped to promote political participation of indigenous women.

29. Spain reported that the Institute of Women promotes public awareness of women's legal rights. It helps women to acquire the adequate education, training and advice which will enable them to know their rights and to exercise them in practice so that they can develop adequate capacity to access and control productive resources. Spain also reported an increase in co-financing arrangements with NGOs last year for programmes aimed at the social integration of women by promoting information and training on human rights and the exercise of women's rights to self-employment, with particular attention to female-headed households facing difficulties.

D. Access to credit

30. Canada reported that it ensures equal access to financing for homes or land, and that there are no impediments to getting a mortgage based on the sex of the borrower. Access to financing in practice may be limited for women, however, as they are more likely than men to have a low income, and lack formal employment or a previous credit rating. Canada has taken action to help ensure that women are not discriminated against when seeking loans or credit from lending institutions. Financial institutions are required to comply with the Canadian Human Rights Act, which provides for non-discrimination on the basis of sex regarding practices in the provision of goods, services, facilities or accommodation customarily available to the general public. One mechanism available to persons who believe they have been discriminated against by banks is the Canadian Banking Ombudsman; this is an independent body established to investigate complaints from individuals and small business owners.

31. Fiji reported that its Ministry of Women, Social Welfare and Poverty Alleviation administers a microcredit facility for rural women. The Government has also put in place a Small/Micro Enterprise Schemes project which has evolved in recent years within, inter alia, the Reserve Bank, the Ministry of National Planning and Finance and the Ministry of Commerce, Business Development and Investment, in conjunction with UNDP and United Nations specialized agencies. Women form the bulk of property owners in this informal sector and will therefore benefit from this project in the long term. Part of this project looks at ways of improving access to credit facilities and linking this with enterprise development.

32. Guatemala reported that women experience difficulties in accessing financial assistance for housing. In particular, women who have not legalized a separation or divorce may find it impossible to access financial assistance schemes, which require both spouses to apply jointly. Women are particularly active in voluntary organizations that seek to ensure the regularization of settlements and the provision of drinking water and other public services in slums. No gender-disaggregated data are available on the beneficiaries of any public action to promote access to land or housing.

33. Mexico replied that, while the Constitution and the Federal Employment Law apply the principle of equality between women and men and therefore do not distinguish between male and female workers, some administrative procedures, in particular as regards the provision of housing loans, had been omitted from this constitutional provision. For example, the rules of the National Housing Fund for Workers (INFONAVIT) on the granting of housing loans stipulated that only males could designate their spouses as economic dependants, which means that female heads of household were at a disadvantage in applying for loans. With a view to remedying this situation, and based on a proposal of the Grupo Plural Pro Víctimas Association, INFONAVIT modified the relevant administrative procedures and criteria. In July 1999 INFONAVIT adopted new rules for the granting of loans, affording preferential treatment to female heads of household and younger workers. Furthermore, as regards the Institute of Social Security for State Employees, housing loans were increased annually by 44.5 per cent in real terms and 68.3 per cent in nominal terms between 1995 and 2000. Priority was given to female heads of household.

34. Spain replied that its Government initiated the Third Equal Opportunity Plan, which includes a number of measures to facilitate access of women entrepreneurs to training, market information, new technologies, commercial networks and bank credit. The Institute of Women, given the increasing difficulties women entrepreneurs face in accessing credit, continues to support the initiatives of women entrepreneurs by providing financial support to those who are starting up new businesses or those under-represented in businesses.

35. Tunisia reported that, following the measures adopted by its Government on 5 April 1996, within the framework of the national plan of action for the family, a woman and her spouse may now each enter into an individual loan agreement with social security funds or the Housing Bank in order to build or purchase a joint home. A measure to reduce the interest rate on home loans was also adopted in August 1998, thus strengthening the voluntary nature of Tunisia's housing policy and helping to reduce the cost of purchasing a family home.

II. REPLIES FROM UNITED NATIONS BODIES, FUNDS AND PROGRAMMES

A. United Nations Department of Economic and Social Affairs

36. The Commission, in paragraph 10 of its resolution, invited the Secretary-General, as Chairman of the Administrative Committee on Coordination, to encourage all organizations and bodies of the United Nations system, individually and collectively, in particular UNDP, UNCHS (Habitat) and UNIFEM, to undertake further initiatives that promote women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, and allocate further resources for studying and documenting the impact of complex emergency situations, particularly with respect to women's equal rights to own land, property and adequate housing. The following two sections summarize replies from relevant United Nations bodies, funds and programmes and specialized agencies relating in particular to this provision of the resolution.

37. Pursuant to General Assembly resolution 54/135, the Department of Economic and Social Affairs organized in collaboration with UNIFEM and in consultation with FAO, an expert group meeting on the situation of rural women in the context of globalization in Ulaanbaatar from 4 to 8 June 2001. The outcomes of the expert group meeting are contained in a report of the Secretary-General on improvement of the situation of women in rural areas (A/56/268) which was submitted to the fifty-sixth session of the General Assembly.

38. The Department also reported that the Economic and Social Council endorsed, in its resolution 2001/5, the agreed conclusions of the forty-fifth session of the Commission on the Status of Women in 2001 regarding women, the girl child and HIV/AIDS. These recommended that Governments, the United Nations system and civil society, as appropriate, take measures to promote and implement women's equal access to and control over economic resources, including land, property rights and the right to inheritance, regardless of their marital status, in order to reduce the vulnerability of women in the context of the HIV/AIDS epidemic. In the high-level segment of its substantive session of 2001, the Council adopted a ministerial declaration calling on the United Nations to, inter alia, support African countries in promoting economic and social policies that are pro-poor and gender-sensitive, including employment and income-generating opportunities for poor people, women and youth through microfinance, community-based

development and decentralization, enterprise development, food security plans, adequate nutrition and land tenure. Furthermore, on the issue of agriculture and food security, the Council strongly called for the promotion of measures to increase food production and access to food, land, credit and technology.

B. United Nations Centre for Human Settlements (UNCHS (Habitat))

39. UNCHS (Habitat) reported that in recent years, it has intensified its activities particularly on issues of inclusive cities and the realization of land, housing and property rights with special focus on the rights of women and vulnerable groups. These activities include the following:

(a) The Global Campaign on Urban Governance was recently launched with a strategic focus on urban poverty reduction, as the quality of urban governance has a tremendous impact on poverty reduction efforts. The ability of the urban poor, especially women, to participate effectively in local decision-making processes has a tremendous impact on whether strategic plans are designed and implemented to address their needs, especially their rights to land, housing and property. The Campaign has developed a policy paper on women and urban governance;

(b) The Cities Alliance was launched jointly by UNCHS (Habitat) and the World Bank in May 1999 as an expanding partnership of organizations committed to developing innovative approaches to urban poverty reduction. The Cities Alliance, in its "Cities Without Slums Action Plan", has set the ambitious target of making a significant improvement in the lives of at least 100 million urban poor by 2020, which was endorsed at the Millennium Summit;

(c) The Global Campaign for Secure Tenure, launched in July 2000, is an advocacy instrument of the United Nations designed to promote the rights of the urban poor to participate in processes of settlement upgrading and urban development. The Campaign recognizes the need to have a specific rights-based focus on women, based on the principle of gender equality and the recognition of women's rights to land, housing and property as human rights. The Campaign issued a publication entitled *Best Practices on Access to Land and Security of Tenure* (HS/588/99E);

(d) Elaboration of a joint housing rights programme has been initiated by UNCHS (Habitat) and OHCHR, pursuant to Commission on Human Rights resolution 2001/28 and Commission on Human Settlement resolution 16/7 (see paragraph 73 below).

40. At the same time, UNCHS (Habitat) has been promoting gender equality and related policy changes in all of its relevant technical cooperation activities. Examples directly related to the resolution include support to policy revision in ongoing land reform in Rwanda including capacity-building for women's organizations, and addressing gender issues in post-conflict reconstruction in Rwanda and Kosovo. Also, a number of projects under the Cities Alliance initiative to improve upgrading of informal settlements have been placing emphasis on the provision of security of tenure as well as equal treatment for women in access to land, markets and credit. Some examples related to this topic include India's draft national slum upgrading initiatives which emphasize the importance of secure tenure and the role of women, and tenure regularization in slum upgrading initiatives under way in Nairobi.

41. In the field of research, UNCHS (Habitat) has undertaken a pilot project on women's rights to land and property covering three East African countries, namely Kenya, Uganda and the United Republic of Tanzania. This comprehensive work examines the historical context, customary/traditional laws and practices, as well as provisions of State law in the modern setting. The study also looks at the critical area of implementation of law and policy and how governance structures facilitate or impede women's equal access to land and property.

42. On the issue of complex emergency situations, UNCHS (Habitat) organized an inter-regional consultation on women's rights to land and property during conflict and reconstruction in Kigali in February 1998 with support from UNDP and UNIFEM. The results of the consultation are reflected in a publication *Women's Land and Property Rights in Post-conflict, Situations Conflict and During Reconstruction: A Global Overview* (HS/589/99E), which points in particular to the challenge of addressing inequalities that women face in land and inheritance rights. Drawing from testimonies and case studies from Eritrea, Liberia and Guatemala, it presents many encouraging examples of success in doing so, including the importance of community development initiatives that work directly with women to solve local problems. As follow-up to this consultation in 1998, a parallel event on the subject was organized during the Istanbul +5 session in New York with UNDP and UNIFEM.

43. UNCHS (Habitat) also held a number of other consultations/meetings on housing rights which also focused on women's equal rights to land, housing and property. These include the panel discussion held during the Istanbul +5 session organized jointly with OHCHR and the Global Parliamentarians on Habitat, with the participation of the Special Rapporteur on the right to adequate housing, the Chairperson on the Committee on Economic, Social and Cultural Rights, as well as many representatives of national delegations and civil society organizations.

C. Economic Commission for Latin America and the Caribbean (ECLAC)

44. ECLAC reported that in February 2000, its member States adopted the Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001,which addresses issues relevant to the resolution including equal access of women to all productive resources, women's lack of land tenure and access to credit, women's participation in decision-making, and giving access to decent housing and adequate infrastructure services for women living in poverty, especially female heads of household. These mandates were further reinforced at the regional preparatory conference for Istanbul +5 held in October 2000, which adopted the Santiago Declaration on Human Settlements.[3]

45. ECLAC also implements several research and technical cooperation projects which relate to the provisions of the resolution. Under the three-year project on "Policy options to promote the development of rural land markets", policy guidelines were formulated to increase transparency in these markets and improve efficiency and equity in land distribution by mainstreaming gender issues and identifying opportunities and obstacles for women wishing to acquire land titles. Under the same project, country-level studies were conducted in order to promote equal access by women to the rural land market as one way of fostering their economic independence and overcoming poverty in the rural sector.

46. Access to land and appropriate housing was also underlined as a key issue in a study carried out by the ECLAC subregional headquarters in Mexico to identify priority areas for public policies in relation to the situation of rural women in Central America. Subsequent to the recommendations contained in the final document which updated the state of implementation of such policies in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, specific legislation has been adopted to promote the rights to property and access to land in Costa Rica (Laws No. 7940 and 7950), El Salvador (National Plan for Women) and Nicaragua (National Plan for Women and Law No. 278).

47. With regard to the issue of complex emergency situations, ECLAC initiated a project in 1999 entitled "Improved damage assessment methodology to promote natural disaster mitigation and risk reduction awareness and preparedness in Latin America and the Caribbean", under which two subregional gender-disaggregated studies on the impact of natural disasters, as well as in the revision of the *Manual para la estimación de los efectos socioeconómicos de los desastres naturales*, originally published by ECLAC in 1991. In addition, a third study on the situation in El Salvador after the earthquakes of January 2001 has been undertaken, which included assessment of losses in terms of their productive and unpaid work for women who had lost their homes.[4]

D. Economic and Social Commission for Asia and the Pacific (ESCAP)

48. ESCAP and UNCHS (Habitat) jointly organized a three-day "Seminar on Securing Land for the Urban Poor", in Fukuoka, Japan, from 2 to 4 October 2001 which addressed the problems faced in cities of developing countries to secure land for the urban poor due to poorly regulated and managed land markets. The seminar exchanged experiences in urban land management and innovative approaches to securing land for housing the urban poor. While the seminar was not exclusively designed to address the issue of women's access to land, gender concern was raised since women form a large share of the urban poor in Asia and the Pacific. The Seminar adopted a number of conclusions and recommendations, including a reaffirmation that secure tenure is a major contribution to the alleviation of poverty, to sustainable livelihoods, to improving the choices and opportunities for men and women, for accessing services, and for recognition of the citizenship of the urban poor and the rights that go with such citizenship.

E. Economic and Social Commission for Western Asia (ESCWA)

49. ESCWA addresses the issues contained in the resolution by undertaking research and field surveys in order to assist member States in taking the appropriate measures and formulating gender-sensitive policies for gender equality, in selected conflict-stricken areas in the ESCWA region. For instance, ESCWA has recently published a study on the relationship between conflict, poverty and female-headed households in order to formulate poverty alleviation strategies to empower these poorer women. Another study focused on the operationalization and feasibility of microcredit lending facilities for alleviating poverty of women in rural and urban areas. The findings of these studies led to proposals and action-oriented policy recommendations for equal access to and control over resources. It is important to note at this point that in the Arab countries, both the Shariah and legislation accord women equal rights with men to own property and real estate.

F. United Nations Development Programme (UNDP)

50. UNDP reported that its Strategic Results Framework (2000-2003) addresses the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and protection of women's human rights as a strategic objective for UNDP support to developing countries. UNDP country offices are assisting programme countries in the formulation and review of legislation, the development of enforcement mechanisms for the protection of women's human rights, as well as in advocacy work. Women's right to inherit land on an equal basis with men is one of the practical initiatives supported by UNDP in Swaziland, Cuba, Honduras, Nepal and India.

51. In Swaziland, UNDP is assisting the Government in the preparation of a case study on women's access to land ownership. In Cuba, UNDP has contributed to legal agreements, in collaboration with UNIFEM, to ensure that at least 50 per cent of forest farms established in Granma Province will be transferred to women owners. In Honduras, UNDP supported the drafting of a gender equity law which includes women's inheritance rights. In Nepal, advocacy and consultation workshops were organized for members of parliament which focused on the changes to the Bill on Women's Property Rights. The bill had been amended to provide the right to parental property both at birth and after marriage, and was scheduled for legislation by the parliament. In India, 22 initiatives spread across 10 States have been supported by UNDP to build the capacity of women's groups to enhance their access to land and control over productive resources.

G. United Nations Development Fund for Women (UNIFEM)

52. UNIFEM reported that its Andean Office has made women's ownership and access to land a priority issue in its programming. This has developed from the strong work it has done in Bolivia where it supported the mobilization of NGOs in a campaign to support the implementation of an existing law which gives women legal access to land and property rights. In Ecuador, UNIFEM has been supporting indigenous women's meetings to discuss issues of land reform and land access and ownership for women. UNIFEM has also continued its role in liaising with other key United Nations agencies and NGOs in putting the issues of women's land rights and ownership on the international agenda.

H. World Food Programme (WFP)

53. In expressing its strong support for the resolution, WFP replied that it has already put policies in place and has made progress in the programmes it supports, in line with the provisions of the resolution. In November 2001, the Executive Director of WFP issued a directive that covers all WFP-assisted operations, specifying that WFP country offices should ensure that women have access to all privately owned physical assets created. This includes land that is allocated or rehabilitated in connection with WFP-assisted activities. The ultimate aim is to achieve gender equality in asset creation. Where there are legal or customary constraints that prevent assets from being divided equally among women and men, special justification needs to be given prior to approval.

54. One success story of women's access to land has been WFP's assistance in Egypt. In 1998, the Government of Egypt by ministerial decree decided that in all WFP-assisted land settlement schemes - depending on the overall size of agricultural holdings - one fifth to one third of the land must be allocated to the settler's spouse (usually the wife) in every household with a husband and wife. In addition, a specific quota (20 per cent) was set for the settlement of female-headed households who face special hardship. In these households all the land is allocated in the name of the female household head. This decree made it possible for all settler women to access additional productive resources and services: they are now eligible for membership in agricultural cooperatives (which assist in input supply, provision of draught power and marketing), and for formal credit.

III. REPLIES FROM SPECIALIZED AGENCIES

A. International Labour Organization (ILO)

55. Article 1.1 (a) of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) defines discrimination as "any distinction, exclusion or preference made on the basis of ... sex ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". In this context, the ILO Committee of Experts on the Application of Conventions and Recommendations has been addressing the issue of women's equal rights with regard to ownership of property and equality of opportunity in employment and occupation. The Committee has recommended amending legislative provisions in a number of countries that require married women to obtain their husband's permission before entering into a commercial partnership agreement, as well as provisions requiring married women to obtain the authorization of their husbands before they can become members of housing, agricultural and family vegetable garden cooperatives. The Committee has also urged a number of Governments to eliminate discrimination on the basis of sex in family law provisions governing the distribution of property at death.

56. In the area of technical cooperation, the ILO Inter-Regional Programme to Support Self-reliance of Indigenous and Tribal Peoples (INDISCO) project has supported indigenous women in Cordilleras, Bukidnon and Sarangani pilot sites in the Philippines, helping them participate in the management and control of their ancestral domains. In accordance with the Indigenous Peoples Rights Act, this has included affirmative action through awareness raising and capacity-building to ensure women's presence and regular participation in village tribal councils and domain-level councils of leaders. Although the new ILO project to promote policy on indigenous and tribal peoples is currently in the planning stage and not yet conducting any activities with women as a specific focus, issues pertaining to indigenous and tribal women are generally integrated in project activities or may serve as the focus of specific components of such activities.

B. Food and Agriculture Organization of the United Nations (FAO)

57. FAO reported that, in accordance with the resolution, it has undertaken various initiatives in order to strengthen the institutional capacity of its member countries in improving women's access to and control over land. In terms of policy support and research, activities included:

(a) Development of several country case studies to document specific constraints and opportunities women face in access to and control over agricultural land and other natural resources in different economic, social and institutional contexts;

(b) Publications and raising awareness materials, including a series of thematic and country fact sheets on gender and land rights, articles on agrarian changes and women's access to land in Nicaragua, and policy guidelines on integrating gender in land and natural resource tenure;

(c) Examining linkages between HIV/AIDS, population, gender and land issues to determine how land tenure is influenced by demographic and gender factors in the context of the HIV/AIDS epidemic; and

(d) Exploring demographic issues that significantly influence land tenure and land management schemes in China both at household and village level, and the participation of women in the overall process of agriculture.

58. FAO also provided technical assistance to the Agrarian Reform Institute of Brazil in order to improve women's access to land in the context of the agrarian reform programme, through the integration of gender-responsive mechanisms for land distribution and management in agrarian reform settlements. In Nicaragua, support was provided to the Instituto de la Mujer Nicaraguense and organizations in the agricultural sector related to land access and management for strengthening institutional mechanisms for women's equal rights to land in land distribution and titling programmes.

IV. REPLIES FROM INTERNATIONAL AND REGIONAL FINANCIAL INSTITUTIONS

59. The Commission, in paragraph 9 of its resolution, recommended that "international financial institutions, regional, national and local housing financing institutions and other credit facilities promote the participation of women and take into account their views to remove discriminatory policies and practices, giving special consideration to single women and households headed by women, and that these institutions evaluate and measure progress to this end". International and regional financial institutions were particularly requested to provide their views relating to this provision of the resolution.

A. African Development Bank

60. The African Development Bank replied that it recently adopted a gender policy paper outlining its commitment to promoting gender mainstreaming in its operations as a means of fostering poverty reduction, economic development and gender justice in the continent. The major objectives of the Bank's gender policy are to promote gender mainstreaming in Bank operations and to support regional member countries to attain gender equality. The guiding principles of the policy call for: (a) the application of gender analysis to all Bank operations; (b) the need to recognize gender differences in development policy and planning; and (c) to eliminate gender inequalities and promote partnership between men and women. The priority areas of the Bank's intervention include education as the key to women's empowerment;

assistance to agriculture and rural development with emphasis on the removal of gender inequality in the sector; and programmes focused on reducing women's poverty, meeting women's health needs and increasing women's participation in decision-making.

B. Inter-American Development Bank

61. The Inter-American Development Bank replied that it has in place an Operational Policy on Women in Development (WID) since 1987. The WID policy establishes that the Bank will assist member countries in the integration of women in the development process through its loan and technical cooperation programmes. A Women in Development Unit was created in 1994 to assist the Bank to mainstream gender concerns into its operations. In 1995, the Bank created the External Advisory Council on Women in Development to advise the Bank on gender issues. The Bank has also established the Committee for Environmental and Social Impact, of which the Women in Development Unit is a member. These actions have indeed helped the Bank and member countries to introduce actions and activities for women's equal ownership of, access to and control over land and their equal rights to own property and to adequate housing. Some of the recommendations are aimed at providing better access to credit for women, inclusion of women's names in land or house ownership titles, and addressing the issue of discrimination against women-headed households.

C. International Monetary Fund

62. The International Monetary Fund (IMF) replied that it provides support in three ways. First, the Fund encourages countries to involve civil society, including women's groups, in the drafting of country poverty reduction strategy papers (PRSPs), which serve as the basis for the Fund's concessional assistance, including debt relief. Such participation gives a voice to women who are directly affected by gender discrimination. Second, the Fund's policy advice for low-income countries emphasizes the importance of redirecting budgetary resources into basic health and primary education, which are of particular importance to women in developing countries; the Fund also emphasizes the importance of equal access to these public services. Third, the Fund and the World Bank are stressing the importance of having countries integrate poverty and social impact analysis (e.g., the analysis of intended and unintended consequences of policy interventions on the well-being of the poor and other vulnerable social groups, including women) into their poverty reduction strategies. The IMF staff is placing emphasis on taking into consideration the social impact of key policy measures that it supports, to ensure that appropriate countervailing measures are integrated into the design of these programmes.

V. WORK OF THE TREATY BODIES AND OTHER UNITED NATIONS HUMAN RIGHTS MECHANISMS, AND THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

A. Work of the treaty bodies

63. In paragraph 12 of the resolution, the Commission encouraged "all human rights treaty bodies, in particular the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, special procedures and other human rights mechanisms of the Commission and the Sub-Commission on the Promotion and Protection of

Human Rights regularly and systematically to take a gender perspective into account in the implementation of their mandates, and to integrate the contents of the present resolution into their work, as appropriate". The following section summarizes recent activities of these bodies that are relevant to the resolution.

1. Committee on Economic, Social and Cultural Rights

64. The Committee on Economic, Social and Cultural Rights consistently examines the aspects of non-discrimination and gender equality in its review of States parties' reports under article 11 (1) of the Covenant. In addition to General Comments No. 4 on the right to adequate housing and No. 7 on forced eviction, adopted in 1991 and 1997, respectively, the Committee addressed the question of women's equal ownership to land and other property in the context of the right to food in its General Comment No. 12 in 1999.

65. At its twenty-sixth session, held in August 2001, the Committee, in its concluding observations on Senegal, urged the State party to enact or enforce legislation prohibiting customary practices such as polygamy, female genital mutilation and restricting access by women to land, property, housing and credit facilities and to inheritance of land, and to take measures to combat such practices by all means, including national education programmes.[5]

66. In it concluding observation on the Syrian Arab Republic, the Committee expressed concern about the persisting discrimination in the political, social and economic spheres of life against women, which is particularly reflected in, inter alia, unequal treatment insofar as personal property and social security laws are concerned, and strongly recommended that the State party take effective measures to incorporate gender equality in both legislation and in governmental policies and administrative programmes, with a view to ensuring equality of men and women and addressing such problems.[6]

67. In its concluding observations on Nepal, the Committee noted with concern that land and agrarian reforms have still not been addressed properly and that tenants therefore have not obtained security of tenure, and that a great number of peasants do not possess any land. The Committee urged the State party to enact or enforce legislation prohibiting customary practices and restricted ownership by women of land and family property which violate the rights of women and girl children and to take measures to combat such practices by all means, including national educational programmes.[7]

2. Committee on the Elimination of Discrimination against Women

68. The Committee on the Elimination of Discrimination against Women gives particular attention to the needs of rural women, specifically the particular problems faced by rural women. The Committee has also nominated a focal point to follow the work of FAO, which regularly contributes information to the Committee.

69. At its twenty-fifth session in July 2001, the Committee, in its concluding observations on Guinea, expressed concern that customs and beliefs preventing women from inheriting or gaining ownership of land and property were most broadly accepted in rural areas. The Committee urged the Government to pay the greatest attention to the needs of rural women and

to ensure that they benefited from policies and programmes adopted in all spheres, as well as participated in decision-making and had full access to health services and credit facilities. It also urged the elimination of discrimination with respect to the ownership and inheritance of land.[8]

70. In its concluding observations on Nicaragua, the Committee expressed its concern at the indirect discrimination against women because of their limited access to credit due to lack of collateral and recommended improved access to credit, with special emphasis on rural women.[9]

71. In its concluding observations on Viet Nam, the Committee expressed concern that the retirement age was negatively affecting rural women's access to land and recommended that the State party evaluate the present Land Law and eliminate any provisions which discriminated, directly or indirectly, against women.[10]

B. Work of other United Nations human rights mechanisms

72. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living of the Commission on Human Rights, appointed by its resolution 2000/9, has been mandated to address, inter alia, the right to non-discrimination in the context of adequate housing and to apply a gender perspective in his activities. In his first report to the Commission (E/CN.4/2001/51), the Special Rapporteur included a section on gender discrimination in housing and land rights, in which he stressed the right of women to be free from all forms of discriminatory conduct pertaining to housing, land and property. Further, he has consistently emphasized this aspect of his work in his contributions to global conferences, including the special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda, the Third United Nations Conference on the Least Developed Countries and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.[11] The Special Rapporteur will continue to focus on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, and intends to devote a substantial part of his report to the Commission in 2003 on these issues.

C. Work of the Office of the High Commissioner for Human Rights

73. Pursuant to Commission resolution 2001/28, OHCHR has initiated a series of consultations with UNCHS (Habitat) with a view to finalizing the programmatic elements of the envisaged joint housing rights programme by early 2002. The primary objective of the programme would be to promote and contribute to the global process towards the full and progressive realization of the right to adequate housing as contained in relevant international instruments. In accordance with paragraphs 11 and 13 of the resolution, the programme will place particular focus on integrating a gender perspective and addressing relevant aspects of the resolution. Furthermore, the recent appointment of a gender coordinator within the Office of the High Commissioner for Human Rights should augur well for further integrating the aspects of the resolution into the housing rights programme and other technical cooperation activities carried out by the Office.

VI. CONCLUSIONS

74. Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing are essential to women's everyday survival, economic security and physical safety, and are often critical determinants in women's overall living conditions, particularly in developing countries. Constitutional recognition of the principle of equality and non-discrimination and adoption of specific gender-sensitive legislation are important prerequisites to guaranteeing and protecting women's rights to land, housing and property. While the contents of such gender-sensitive legislation may vary in different economic, political and social contexts, it is most pertinent that they be in line with international human rights instruments. Most recently, this has been reaffirmed in the Declaration on Cities and Other Human Settlements in the New Millennium adopted in June 2001 at the special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda, in which Governments resolved "to continue to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies, as well as ensuring their right to security of tenure and to enter into contractual agreements" (para. 44).

75. Experiences reported indicate that education and awareness raising among both men and women on the status of women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing are essential to the realization of these rights for women. In view of the important role the civil society can play in this regard, and also in other aspects of this resolution, the Commission may wish to further consider the role of the civil society, including women's organizations, in promoting the content of the resolution.

76. This report demonstrates the wealth of activities undertaken by the United Nations system as a whole, and by the international and regional financial institutions, on areas relevant to the resolution. The Commission may wish to further encourage the United Nations agencies to explore ways in which the provisions of this resolution could be further implemented in a system-wide manner through existing mechanisms, such as the Common Country Assessment/United Nations Development Assistance Framework, the Habitat Task Manager system or the Comprehensive Development Framework/PRSP. The Commission may also wish to urge Governments to provide adequate support to the efforts of the United Nations agencies in this respect, in particular towards the realization of a joint housing rights programme being formulated jointly by OHCHR and UNCHS (Habitat) in cooperation with other agencies, and other technical cooperation activities.

77. Lastly, the complexity of issues involving women's ownership of, access to and control over land and the equal rights to own property and to adequate housing, as demonstrated in this report, makes the need for more substantive research all the more evident. Among the possible areas of research are issues related to women's access to land and/or the relationship between the right to adequate housing and land and property rights, with a view to better determining how the right to adequate housing might be used to support women's rights to land and property. In relation to the latter, the Commission may wish to take note of the reports of the Special Rapporteur on adequate housing,[12] in which he indicated his willingness to examine these issues from the perspectives of his mandate.

Notes

[1] Based on information from the countries for the preparation of Istanbul +5, UNCHS (Habitat) compiled a booklet entitled "The Gendered Implementation of the Habitat Agenda", which focuses on women, secure tenure and governance. National reports on the implementation of the Habitat Agenda submitted to Istanbul +5 are available on the UNCHS web site (*http://www.unchs.org*).

[2] Canada uses the term "First Nations" to replace previously used terms such as "band" or "tribe".

[3] See Report of the regional meeting for Latin America and the Caribbean for the special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda (Santiago, 25-27 October 2000) (HS/C/PC.2/2/Add.5, annex I).

[4] The complete study is available on the ECLAC gender web site (*http://www.eclac.cl/mujer*).

[5] E/C.12/1/Add.62, paras. 15 and 34.

[6] E/C.12/1/Add.63, paras. 14 and 31.

[7] E/C.12/1/Add.66, paras. 21 and 43.

[8] A/56/38, paras. 138 and 139.

[9] Ibid., para, 307.

[10] Ibid., para. 271.

[11] A/CONF.189/9.

[12] E/CN.4/2001/51 and E/CN.4/2002/59.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Globalization and its impact on the full enjoyment of human rights

Report of the High Commissioner for Human Rights submitted in accordance with Commission on Human Rights resolution 2001/32

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Introduction

1. In its resolution 2001/32, the Commission requested the High Commissioner for Human Rights, in cooperation with the United Nations Conference on Trade and Development (UNCTAD), to submit a comprehensive report entitled "Globalization and its impact on the full enjoyment of human rights" for consideration by the Commission, taking into account the provisions of the resolution. The High Commissioner submits the present report in response to the resolution.

2. The report has been drafted in the framework of the preliminary report of the Secretary-General on globalization and its impact on the full enjoyment of all human rights (A/55/342). In that report, the Secretary-General noted that "[w]hile there have been previous eras that have experienced globalization, the present era has certain distinctive features, including, although not limited to, advances in new technology, in particular information and communications technology, cheaper and quicker transport, trade liberalization, the increase in financial flows and the growth in the size and power of corporations" (para. 5). The Secretary-General noted that "[t]he norms and standards of international human rights law have an important role in providing principles for globalization" (para. 8). In order to focus the report in a way that allows meaningful analysis, the High Commissioner has chosen to examine the human rights dimensions of one of these processes in particular, namely trade liberalization. The focus on trade liberalization is based on a perceived need to continue filling a gap in information on human rights and globalization. While work is already being done by the various human rights mechanisms on structural adjustment programmes - including three reports of the Special Rapporteur on structural adjustment programmes - as well as information technology - in particular racism on the Internet in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance - little attention so far has been focused on trade liberalization.

3. The specific aspect of trade chosen is the liberalization of agricultural trade. The High Commissioner has chosen this for a number of reasons. Importantly, in keeping with the resolution, the focus on agricultural trade provides a helpful bridge between the High Commissioner's mandate and that of UNCTAD. UNCTAD has recognized the important link between trade in agriculture and food security and development. According to the tenth session of the United Nations Conference on Trade and Development (UNCTAD X) UNCTAD is mandated to identify, on the basis of research and empirical evidence and with development impact assessment, the implications of existing and emerging multilateral trade rules for the development prospects of developing countries, in particular on "ways and means to improve market access for their agricultural products", on "domestic support, including in the context of their efforts to increase productivity and food security" as well as on "export subsidies and other kinds of export support".[1] The Programme of Action adopted at the Third United Nations Conference on Least Developed Countries held in Brussels in May 2001 noted that agriculture is the pivotal sector in LDCs that underpins food security, foreign exchange earnings, industrial and rural development, and employment generation. The LDC Conference encouraged continuing the process of trade liberalization to expand the sources of food supply. In this context, the Programme of Action calls for coherent actions by the United Nations and other organizations as an essential element in policy reform directed to transforming trade into a powerful engine for growth and poverty eradication in LDCs.[2]

4. The High Commissioner has also chosen trade in agriculture as the focus of the report due to her specific mandates in relation to the right to food and the right to development. The Plan of Action adopted at the World Food Summit invites the High Commissioner, in cooperation with other organizations and bodies including United Nations organizations and relevant intergovernmental mechanisms, to define better the right to food and to propose ways to implement and realize the right to food as a means of achieving the commitments and objectives of the Summit.[3] General Assembly resolution 48/141 establishing the mandate of the High Commissioner specifically sets out her responsibility "to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose" (para. 4 (c)). Given the links between agricultural trade and development and food security, the High Commissioner believes that an examination of the liberalization of agricultural trade will be a further step in fulfilling her mandate.

5. The High Commissioner also views the present report as a means of contributing to the work of the Sub-Commission on the Promotion and Protection of Human Rights on the human rights dimensions of World Trade Organization (WTO) trade agreements. The WTO agreements cover three areas: trade in goods, trade in services and intellectual property. The High Commissioner has already submitted one report concerning the WTO Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) on the enjoyment of human rights (E/CN.4/Sub.2/2001/13). The Sub-Commission in its resolution 2001/4, adopted at its last session, has also begun considering the human rights implications of the WTO General Agreement on Trade in Services (GATS), expressing concern "about the impact of liberalization of trade in agricultural products upon the promotion and protection of the right to food for members of vulnerable communities".

6. The High Commissioner believes that a focus on the liberalization of agricultural trade will also build upon work of the special mechanisms and treaty bodies of the human rights system. The international human rights machinery is increasingly looking at the link between international trade rules and the right to food and the right to development. The independent expert on the right to development has recently linked the implementation of the right to development to trade and macroeconomic issues concerning access to food and food security. In his third report to the open-ended Working Group on the Right to Development (E/CN.4/2001/WG.18/2, para. 12), the independent expert referred to the standards of the general comment on the right to food adopted by the Committee on Economic, Social and Cultural Rights and noted that the right to development implies looking at the provision of food as a part of a country's overall development programme, bringing in fiscal, trade and monetary policies and the issues of macroeconomic balance. In his report to the General Assembly (A/56/210) in 2002, the Special Rapporteur on the right to food also underlined that free trade does not automatically feed the hungry.

7. The report has been drafted in cooperation with UNCTAD, as well as other relevant international organizations. In response to the resolution, the High Commissioner wrote to the Secretary-General of UNCTAD on 22 June 2001 as a first step in the process of consultation. Subsequently, the Office held consultations with UNCTAD, and UNCTAD reviewed the report prior to submission. The report has also drawn material from reports of other international

organizations, in particular the WTO, the Food and Agriculture Organization of the United Nations (FAO) and the Organization for Economic Cooperation for Development (OECD), and the Office held consultations with some of these organizations.

8. Rather than make an impact assessment, the purpose of the report is to outline the main issues arising when the liberalization of agricultural trade is viewed from a human rights perspective. The report begins by outlining the norms and principles of human rights that are most relevant to the negotiation and implementation of the Agreement on Agriculture (AoA). The report notes that the member States of the WTO hold concurrent responsibilities to promote and protect human rights as well as to implement trade rules and that the norms and standards of human rights provide a legal framework to protect the social dimensions of globalization. The report then gives a brief introduction to the main features of the AoA - market access, domestic support, export competition, special and differential treatment for developing countries and the ongoing reform process. The report identifies some of the issues that have arisen in the implementation of the AoA as well as some of the general impacts of the liberalization of agricultural trade - whether as a result of the implementation of trade rules, or due to macroeconomic reforms. Finally, the report identifies areas where further clarification or elaboration is needed.

I. HUMAN RIGHTS, GLOBALIZATION AND AGRICULTURE

A. The international and social order

9. In his report to the General Assembly (A/55/342), the Secretary-General identified the basis for adopting a human rights approach to globalization in article 28 of the Universal Declaration of Human Rights, which states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". There the Secretary-General stated that "such an international and social order is one that promotes the inherent dignity of the human person, respects the right of people to self-determination and seeks social progress through participatory development and by promoting equality and non-discrimination in a peaceful, interdependent and accountable world" (para. 7). Achieving fair and equitable trade liberalization by adopting human rights approaches to WTO rules will be an important step in establishing a just international and social order and a failure to do so could perpetuate or even exacerbate existing inequalities. As the Committee on Economic, Social and Cultural Rights (CESCR) concluded in its recent statement on poverty (E/C.12/2001/10), the absence of an equitable multilateral trade, investment and financial system - amongst other factors - is a global structural obstacle to poverty reduction (para. 21).

10. The High Commissioner has already noted the need for human rights approaches to WTO rules (see E/CN.4/Sub.2/2001/13, para. 60). Of the 144[4] members of the WTO, all have ratified at least one human rights instrument. All but one have ratified the Convention on the Rights of the Child, 112 have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and all have adopted the Universal Declaration of Human Rights. WTO members should therefore bear in mind their concurrent obligations to promote and protect human rights when negotiating and implementing international rules on trade liberalization, recognizing the declaration made at the World Conference on Human Rights in Vienna that human rights are "the first responsibility of Governments".[5] A human rights approach seeks to provide the ground

for implementing these concurrent obligations coherently. Moreover, a human rights approach provides balance to the liberalization of trade. While the WTO agreements provide a legal framework for the economic aspects of the liberalization of trade, the norms and standards of human rights balance this by offering a legal framework for the social dimensions of trade liberalization.

B. Agricultural trade, the right to food and the right to development

11. Given the important role that agriculture plays for food security and development in many countries, the design and implementation of WTO rules concerning agriculture could affect the enjoyment of human rights, in particular the right to food and the right to development, and also the right to health, the right to social security, as well as the rights of particular groups such as children, indigenous peoples or migrants. The following section sets out the content and obligations concerning the right to food and the right to development relevant to the development of the agricultural sector and to the negotiation and implementation of WTO rules on agricultural trade.

12. The Committee on Economic, Social and Cultural Rights has elaborated upon the content of the right to food in its general comment No. 12 (E/C.12/1999/5). According to the Committee, the right to food is realized when everyone has physical and economic access at all times to adequate food or means for its procurement (para. 6). The core content of the right implies:

(a) *The availability of food* in a quantity and quality sufficient to satisfy the dietary needs of individuals free from adverse substances. Availability refers to the possibility of feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems that can provide more food from the site of production to where it is needed (paras. 8 and 12);

(b) *The accessibility of food* in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Accessibility implies both economic and physical accessibility. Economic accessibility implies that financial costs related to food are not so excessive as to threaten the purchase of other basic needs. Physical accessibility implies that adequate food must be available to everyone and all groups (paras. 8 and 13).

13. States have obligations to protect, respect and fulfil the right to food at the national and international levels. At the national level, States have responsibilities to establish strategies to promote and protect the right to food. Strategies will differ from State to State but should comply with human rights principles such as accountability, transparency and people's participation (paras. 21 ff). Special measures should be taken to guarantee the right to food of vulnerable populations and individuals (para. 28).

14. At the international level, the Committee considers that States carry responsibilities, including in the following areas (paras. 36 ff):

(a) To respect the right to food in other countries;

(b) To facilitate access to food and to provide the necessary food aid where required - this includes providing food aid in ways that do not adversely affect local producers and markets. Further, food aid should be organized in such a way as to return self-reliance to the beneficiaries;

(c) To ensure that in international agreements the right to food is given adequate consideration.

15. The Committee has also set out the acts that constitute a violation of the right to food. These include (para. 19):

(a) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food;

(b) The failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others;

(c) The failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.

16. States have also undertaken obligations to promote and protect the right to development according to the Declaration on the Right to Development. Two aspects of the right are particularly relevant to the liberalization of agricultural trade:

(a) First, the right to development places the human being at the centre of development. Article 1 of the Declaration states that the right is an "inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights can be fully realized";

(b) Second, the right implies the duty of States to formulate appropriate national development policies aimed at the realization of the right to development for the well-being of the entire population.

17. There are many possible courses of action that the State can take to promote the right to food and the right to development. In relation to the right to food, these will often take place at the local and even household level. However, it can be assumed that States will use all legislative, economic, social and political means necessary to achieve the full realization of these rights, including market-based mechanisms. Indeed, the ICESCR specifically identifies the need to ensure that international trade promotes the right to food. Article 11 (2) states that "[t]he States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed, taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

II. THE AGREEMENT ON AGRICULTURE

18. Given the need to promote the right to development and the right to food through local agricultural production and by insulating domestic markets from international price volatility, the liberalization of agricultural trade was treated differently from other sectors in the original General Agreement on Tariffs and Trade (GATT) and significant degrees of protectionism were allowed to persist. However, prior to the Uruguay Round, agricultural trade was in "disarray" and high levels of domestic support, large-scale use of export subsidies by some developed countries, and unstable world prices characterized the sector.[6] This situation encouraged States to include comprehensive multilateral rules for the liberalization of agricultural trade on the agenda of the Uruguay Round. After a difficult negotiation process, States concluded the Agreement on Agriculture, which is one of the agreements annexed to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and is thus an integral part of the WTO Agreement. The AoA came into force in 1995. The Committee on Agriculture oversees the implementation of the AoA and generally meets four times a year.

A. The Agreement

19. Although not specifically referred to in the substance of the AoA, the objectives of the Agreement can be drawn from the preamble which recalls the long-term objective of the reform process "to establish a fair and market-oriented agricultural trading system" and "to provide for substantial progressive reductions in agricultural support and protection". To this end, the AoA comprises commitments to reduce support to and protection of the agricultural sector under the three headings of market access, export subsidies and domestic support. The rules and commitments undertaken by members of the WTO under each of these headings can affect the agricultural sector in a variety of ways and as a result can have an impact on States' ability to guarantee the right to food and the right to development.

20. *Market access.* The removal of obstacles to accessing markets opens trade opportunities and should increase trade. Tariffs and so called "non-tariff barriers to trade" are two important sets of obstacles to market access. Tariffs are taxes levied on imported goods and are simple forms of trade policy instruments that provide a source of government revenue. Non-tariff barriers take a different form, for example a quota restriction on imports. Both tariff and non-tariff barriers provide protection for domestic sectors - in this case, agriculture - from international competition by artificially increasing the domestic price of imported goods. Raising tariffs and protecting against import surges are means by which the State can protect local production and so promote the right to development of local producers, although at the same time, consumers have to cope with higher food prices. The removal of tariffs can open large markets to outside producers which, in the longer term, could let producers in developing countries have greater access to the benefits offered by trade liberalization. The effects of removing tariffs will be different from country to country. The AoA introduced rules that capped and reduced tariff levels and banned agricultural non-tariff barriers to trade,[7] introduced minimum market access opportunities[8] and provided a special safeguard mechanism to protect against import surges (see annex).

21. *Export competition.* Export subsides are seen by many as one of the most trade-distorting measures. They tend to increase the market share of the subsidized exporter and lower world market prices of the product concerned. Further, export subsidies are not necessarily stable as they can change from year to year so they can also result in greater fluctuations in world food supply and prices. For countries that are net food-exporters, but that have limited resources to provide subsidies, export subsidies in other countries can impede local production by increasing the volume of products on the world market and lowering their price. For net-food-importing countries, there might be benefits in the short term due to lower prices of imports from a subsidizing export country. However, the instability of export subsidies means the supply of cheaper products is unpredictable and so makes these countries vulnerable to price increases when the subsidies are lifted. Similarly, the lower international prices might have negative effects on local production in these countries by flooding local markets with cheaper products that local producers cannot compete with.[9] These various impacts of export subsidies could impact on local producers and even consumers' enjoyment of their right to development. Similarly, the uncertainty of export subsidies could affect the availability and accessibility of food, and ultimately the enjoyment of the right to food in certain cases.

22. Under the AoA, WTO members specify for each year the maximum quantity of products subject to export subsidies and the maximum level of outlay for these subsidies and undertake to reduce the level of subsidies calculated according to a base period of 1986-1990.[10] Members have also undertaken not to provide any new subsidies. This implies that countries that have not specified the maximum levels of export subsidies cannot introduce export subsidies in the future. Given that generally only certain wealthy countries have the capacity to subsidize exports, the reduction and eventual elimination of export subsidies will be an important step in achieving a just international and social order as envisaged under article 28 of the Universal Declaration.

23. *Domestic support.* Prior to the Uruguay Round, agricultural support for local producers - "domestic support" - was excessive, particularly in developed countries, and was leading to mounting surpluses and stockpiles of certain products. This was having a distorting effect on trade - for example by increasing the volume of products on the market and lowering their price. Consequently, the AoA included measures to reduce domestic agricultural support. The provisions introduced the means to reduce domestic support while at the same time giving Governments some room to develop agricultural policies responsive to national needs. The AoA divides domestic support into essentially two categories: those subsidies that members have to reduce, and those they do not have to reduce. Measures that do not have to be reduced fall within a number of subcategories, namely "green box" measures, "blue box" measures, development measures and *de minimis* levels of support. Measures that have to be reduced are included in the "amber box" (see annex). In supporting producers, domestic support has the potential to promote agricultural development - and consequently the right to development of producers - although this is generally at the cost of tax-paying consumers. However, when domestic support is concentrated in wealthy countries and is so large that it becomes trade distorting and anti-competitive for poorer producers and traders, this raises questions concerning the compatibility of domestic support with a just international and social order conducive to the promotion and protection of human rights.

24. *Special and differential treatment.* The Agreement includes special and differential treatment for developing countries.[11] In other words, it takes into account the special problems that developing countries might face in the implementation of the AoA, by providing that developing and least developed countries enjoy longer implementation periods and lower reduction rates in implementing commitments on market access, export subsidies and domestic support. Developing countries may also continue providing support for some development measures and may grant marketing cost subsidies and internal transport subsidies in certain cases.[12] Further, while recognizing the potential benefits for all countries from the agricultural "reform process" in the WTO, States recognized that least developed and net-food-importing countries might experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions. Specifically, States accepted that liberalization could increase world market prices - in particular through the lowering of export subsidies - which could affect the availability for these countries of basic foodstuffs on reasonable terms.

25. Consequently, WTO members adopted a Ministerial Decision (the Marrakesh Decision) addressing these matters as part of the Uruguay results (the WTO Agreement).[13] The Decision provides for four separate response mechanisms concerning food aid, agricultural export credits, the establishment of a financing facility to finance commercial imports, and an agreement to provide technical and financial assistance to improve agricultural productivity and infrastructure (see annex). Special and differential treatment for developing countries is a significant element in trade rules from a human rights perspective. Special and differential treatment recognizes that different countries face particular problems when liberalizing their agricultural sectors, which is the first step in accepting the need for affirmative action in trade liberalization. Thus, special and differential treatment could provide a potential means of operationalizing the international cooperation commitments under the ICESCR and the Declaration on the Right to Development.

26. *Built-in agenda.* Finally, the AoA includes, under article 20, a built-in agenda for continuing negotiations on the agricultural reform process from 2000. Proposals for negotiations have come from most of the WTO membership. The proposals have demonstrated many and diverse positions and concerns, reflecting the fact that the agricultural sector has widely varying significance from country to country. In November 2001, ministers of WTO members met in Doha, Qatar, and adopted a declaration that included agreements concerning future negotiations on agriculture. Ministers committed themselves, without prejudging the outcome of the negotiations, to comprehensive negotiations aimed at "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support".[14] Importantly, ministers also agreed that special and differential treatment for developing countries would be an integral part of all elements of the ongoing negotiations including, as appropriate, in rules and disciplines so that the treatment is operationally effective and enables developing countries to take effectively into account their development needs, including food security and rural development. The ongoing reform process therefore offers an opportunity to review and improve trade rules with a view to ensuring the flexibility necessary for States to liberalize agricultural trade, while at the same time respect, protect and fulfil human rights, in particular the right to food and the right to development.

B. Implementation of the Agreement

27. Possibly the most positive achievement of the AoA has been to subject international agricultural trade to a rules-based and more transparent system. This in itself is an important first step in effectively addressing the barriers to and distortions in trade in the areas of market access, domestic support and export subsidies, beginning the process towards a more fair international trading system. However, beyond this, an OECD study indicates that "the empirical evidence suggests that the overall effects [of the AoA] have been moderate". Further, according to the FAO and UNCTAD, the implementation of the Marrakesh Decision has been "unsatisfactory".[15] Issues arise in relation to the implementation of the AoA itself, as well as issues concerning the Marrakesh Decision.

28. *Issues of balance and fairness*. The OECD study concluded that agricultural tariffs on some products are still high, with prohibitively high tariffs on some products that are considered "sensitive" to developing countries,[16] and, further, that trade-distorting domestic support remains highly skewed with over 90 per cent concentration in developed countries.[17] In particular, the OECD study notes that over 60 per cent of domestic agricultural support in OECD countries is excluded from reduction commitments under the AoA, in spite of the fact that many exempt support measures - while admittedly less trade distorting than traditional forms of domestic support - still have production and trade effects.[18] The OECD study notes that the export subsidy commitments have been the most effectively implemented although it also notes that few countries had to change their policies substantially, as the implementation period coincided with a rise in world grain prices - thus reducing the need to provide incentives to export.[19] In contrast to many OECD countries, the agricultural sectors in LDCs and net-food-importing developing countries cannot benefit from the same flexibility as in some OECD countries. For these countries, the agricultural sector had already been substantially liberalized prior to the adoption of the AoA due to macroeconomic reforms led by World Bank and International Monetary Fund structural adjustment programmes. For many of these countries, the agricultural sectors are in fact more liberalized than is required under their AoA commitments.[20] Further, while some OECD countries continue high levels of domestic support - even in accordance with the AoA - LDCs and many net-food-importing developing countries simply do not have the finance to do so. Another issue relating to fairness is the question of acceding countries. FAO has observed that developing countries negotiating accession to the WTO are facing tough negotiations, in particular on domestic support, and many have not managed to ensure special and differential treatment in the commitments they have undertaken.[21]

29. *Availability and effectiveness of targeted food aid*. While, in accordance with the Marrakesh Decision, States concluded a new Food Aid Convention, there are still general problems with food aid which could have negative impacts on the enjoyment of the right to food and work against the effective implementation of the Marrakesh Decision. The World Food Programme (WFP) has stated that it is critical that food aid reaches targeted populations if the spirit of the Marrakesh Decision and the needs of the reform process are to be met during the reform process.[22] Yet, WFP has highlighted the fact that only half of global food aid during the 1990s was actually targeted to those who needed it, with WFP itself being responsible for delivering about two thirds of that targeted aid. Further, food aid can be erratic as it tends to be measured in monetary terms rather than in tonnage. In this way, when prices are high, food aid is low, and when prices are low, food aid is high. This was the case for a major food aid supplier

which doubled its food aid from 1997 to 1998.[23] This counter-cyclical nature of food aid - responding to prices rather than need - runs against the interests of beneficiary countries. In particular, the presence of high levels of food aid when food prices are low can have negative effects on the livelihoods of local producers who cannot compete.[24] On the other hand, lower levels of food aid when prices are high can aggravate food insecurity in recipient countries. As noted by the CESCR, in accordance with the right to food, States have a responsibility to provide food aid in ways that do not adversely affect local producers and markets (E/C.12/1999/5, paras. 36 ff);

30. *Financing for agricultural development.* Under the Marrakesh Decision, ministers agreed to give full consideration to requests for the provision of technical and financial assistance to improve agricultural productivity and infrastructure in LDCs and net-food-importing countries. The FAO has indicated the importance of directing more resources towards agricultural development if the 2015 target of halving the number of the food insecure is to be met.[25] For this, FAO underlines the need for political will by both national Governments and international foreign donors. At the national level, the level of public expenditure in agriculture is lower in the category of countries with the highest prevalence of undernourishment. At the same time, internationally, official development assistance (ODA) from both bilateral and multilateral donors in the agricultural sector has stagnated during the 1990s and private foreign direct investment has generally bypassed most poor countries, with relatively little investment going to agricultural development. For example, the shortfall between a "business as usual" investment scenario and one in which the 2015 target will be met in sub-Saharan Africa is 38 per cent.[26] To improve financing for agricultural development, it is important that food-insecure countries identify the problems they are facing in promoting the right to food in the context of globalization as, under the Marrakesh Decision, financial assistance is given on the basis of requests from recipient countries. However, the WTO has indicated that it has no information on whether least-developed and net-food-importing developing countries have made requests pursuant to the Marrakesh Decision.

31. Nonetheless, the process of reform of agricultural trade in the WTO must be viewed as an ongoing, dynamic process that, while possibly not a perfect system, has subjected trade to a more transparent, rules-based system. On this basis, the OECD study suggests that there is a need for further reform based on an appropriate role for Governments to address policy goals that are targeted, transparent, cost-effective and avoid distortion of production and trade.[27] Such ongoing reform will be important also in establishing a truly non-discriminatory, participatory and transparent international trading system that provides an enabling environment for the enjoyment of human rights.

III. HUMAN RIGHTS, THE AGREEMENT ON AGRICULTURE AND THE LIBERALIZATION OF AGRICULTURAL TRADE

A. Issues arising from the liberalization of agricultural trade

32. Establishing a human rights approach to the AoA will depend on identifying the real and potential impacts of trade rules on the enjoyment of human rights. However, it is difficult to isolate the effects of the AoA on human rights from the effects of trade liberalization generally - for example, as a result of macroeconomic reform - and even from the effects of the many other

factors that influence the agricultural sector. Changing weather patterns, population growth, financial crises, food safety regulations, ongoing structural adjustment reform, changing patterns of food aid and ODA, national development policies, not to mention the different relationship of each country to the market, influence the agricultural sector as do the implementation of trade rules. Trade liberalization will also affect countries differently, depending on whether a country is a net-food-importing country, a food-exporting country, a small or large developed country, an LDC, a small island State and so on. Further, the AoA will affect the human rights of people within a country differently; for example, a small farmer, a farm labourer, an urban dweller, or an industrial production firm will often be affected quite differently.

33. In a general sense, the establishment of a rules-based trading system and the opening of markets can help guarantee the enjoyment of human rights by improving opportunities for development, economic growth, job creation, and the diffusion of technology and capital. Increased levels of trade in agriculture can contribute to the enjoyment of the right to food by augmenting domestic supplies of food to meet consumption needs and by optimizing the use of world resources. Similarly, on account of the AoA, international trade in agriculture is now subject to rules, which promotes transparency and accountability - important prerequisites for the enjoyment of human rights.[28] A recent WTO study has noted that "trade liberalization is generally a positive contributor to poverty alleviation - it allows people to exploit their productive potential, assists economic growth, curtails arbitrary policy interventions and helps to insulate against shocks".[29]

34. However, the WTO study also recognizes that trade liberalization will create losers even in the long run and that trade reforms could exacerbate poverty temporarily. Human rights law concerns itself in particular with the situation of the individuals and groups who might suffer during the reform process. Indeed, this is one of the key issues concerning globalization and human rights. Even where the net social benefit from trade liberalization favours the majority in a certain country, the principle of non-discrimination under human rights law requires immediate action to protect the human rights of those who do not benefit. In the case of the AoA, this means that States should use existing flexibilities in the Agreement where they exist, and WTO members should consider improving or adding flexibilities where appropriate. The rest of this section sets out the principal issues raised in the context of open and opening markets generally - not limited to only the effects of the AoA.

35. *Resource-poor farmers and farm labourers*. The protection of the rights of individuals and groups is the focus of human rights approaches to trade liberalization. FAO studies on the impact of the AoA on 14 developing countries have noted possible negative impacts of liberalization on certain individuals and groups. The studies indicated that there has been a general trend towards the consolidation of farms as competitive pressures build up following trade liberalization. However, while this has contributed to an increase in productivity and competitiveness, it has also led to the displacement and marginalization of farm labourers. This has created hardship for small farmers and food-insecure populations, in situations where there are few safety nets.[30] For example, in Sri Lanka, tariff reductions and the associated increase in food imports have put pressure on the rural sector, including employment. The FAO study cited the case of 300,000 people involved in the production and marketing of onions and potatoes

who were adversely affected by tariff reductions. The study notes that the possibility of diversification away from these crops was limited.[31] The case study of India underlines the importance of using existing flexibilities within the AoA. The FAO study demonstrates that while agricultural trade liberalization is likely to impact negatively on the rural and urban poor by exposing small farmers to import competition and raising the level of food prices, the appropriate response was identified as safety net measures such as employment programmes, targeted food supplies and a programme of food price stabilization, all of which would be in conformity with the AoA.[32]

36. *Local food production.* There could be right to food implications where trade liberalization affects the availability, accessibility or sustainability of food supplies. For example, the FAO country studies raise the issue of the fate of local products in smaller countries and their ability to compete with those of larger producers. As one example, the study of Guyana noted that increasing imports of fruit juices from larger producers have displaced much domestic production and underlined a growing dependency in Guyana on imported foods. The fear was expressed in Guyana that without adequate market protection, coupled with appropriate development programmes, many domestic products would be displaced or local production undermined, leading to transformations in local diets and a growing dependency on imported foods.[33]

37. *Balance of payments.* Balance of payment problems - if long-term and unsustainable - could affect negatively a State's ability to promote the right to development. For some developing countries, there has been a trend towards import growth outstripping growth in exports. The FAO country studies show that for 11 of the 14 countries studied, the total value of food imports grew more rapidly than the value of exports in 1995-1998 in comparison with 1990-1994 - a negative outcome for those countries. A more comprehensive WTO study notes growing negative trade balances in agricultural products in 59 out of 107 non-OECD countries.[34] The reasons behind such an outcome are complex and might not be a concern where, for example, relative increases in food imports are balanced with export increases in other areas such as industrial products.[35] However the figures underline the asymmetry for some countries between the capacity to attract imports after opening markets and the capacity to increase exports - the latter requiring considerably more planning and finance. Net-food-importing countries that are single commodity exporters face particular problems in this regard, significantly, when faced with the erosion of trade preferences that could result from trade liberalization.

38. *Vulnerability to price fluctuations.* Again, in some cases, vulnerability to price fluctuations as a result of trade liberalization could expose some States to the external vagaries of markets that could have a negative impact on their ability to finance development, or even to guarantee the availability of food in some cases.[36] Perhaps the most notable case of price fluctuations was the increase in world cereal prices from 1995 to 1997 and their subsequent decrease in 1998. According to the FAO, the price increases in cereals led to a 49 per cent rise in the cereal import bills of LDCs and net-food-importing developing countries.[37] However, there is also evidence suggesting that many developing countries were able to offset the increases in world prices through lowering tariffs and substituting cereal imports with

lower-quality cereal imports, and noting that the price increases and their consequences were less serious than the cereal price increases of the 1970s - prior to liberalization.[38] Perhaps the most significant observation is that vulnerability to the effects of international price changes will vary according to the size of the country and its dependency on imports. From a human rights perspective, it will be important that trade rules guarantee flexibility to take remedial action to ensure that price fluctuations do not negatively affect the availability or accessibility of food.

39. *Preferential treatment for developing countries*. Many LDCs and net-food-importing countries continue to enjoy preferential treatment for their exports under various multilateral schemes, such as the Cotonou Partnership Agreement between the European Union and the African, Caribbean and Pacific group or the Caribbean Basin Initiative of the United States. Such schemes hold the potential to provide important market access opportunities for these countries. However, discussions during consultations for the drafting of this report raised the issue of preferential trade agreements leading to discrimination among developing countries, for example where certain LDCs and net-food-importing countries are not party to such agreements.

B. Developing human rights approaches to the AoA

40. The negotiation and implementation of WTO rules concerning agriculture is only one issue relevant to agricultural development and the promotion and protection of the right to food and the right to development. Agricultural development depends on many factors including the presence of solid transport systems, the availability of up-to-date farming technology, the maintenance of plant diversity, the availability of credit facilities, the level of rural education, the existence of appropriate national development planning, political stability, good national governance and so on. WTO trade rules are only one piece of the puzzle. However, trade rules that leave developing countries, especially food-insecure countries, the flexibility to develop the agricultural sector in appropriate ways and that promote effective and operational forms of international cooperation while at the same time achieving real reductions in the worst forms of trade-distorting measures will assist countries to meet their obligations to respect, protect and fulfil human rights.[39] The ongoing reform process in the WTO offers the opportunity to achieve this.

41. At the heart of adopting a human rights approach to the liberalization of agricultural trade is the issue of whether a "one-system-fits-all approach" is appropriate. The agricultural sector plays starkly different roles in the development of every country. In the case of low-income countries, the agricultural sector plays an essential role in ensuring food security and alleviating poverty. In these countries, it is still the major employer, it is a significant contributor to GDP as well as an important source of foreign exchange and revenue. Further, food consumption accounts for a significant share of expenditure for households in many developing countries. As the FAO has stressed, "[f]rom a historical perspective, very few countries have been able to successfully transform their economy into a developed one without first developing their agriculture".[40] For developed countries, the agricultural sector is often less significant as an employer and contributor to GDP, and food consumption accounts for a relatively small and decreasing share of household income. The application of the same rules to widely different populations and conditions without effective affirmative action for the poor risks exacerbating existing inequalities. In this context, the High Commissioner endorses the opening statement of the Secretary-General of UNCTAD at UNCTAD X when he stated that:

> "Some still insist that the problem will be better dealt with by bringing about a level playing field, by just eliminating price-distorting mechanisms, by creating equal opportunity for all. Is it really serious to pretend that equal opportunities will suffice when people and countries start from astronomically distant starting points? How truly equal is equal in this case? Should we not recognize that the game of competition requires, as all games do, not only clear rules and impartial arbiters but training [and] preparation, as well? Is this not what countries that have long-deprived and underprivileged minorities do with 'affirmative action' programmes aimed not at some hypothetical equality but at the actual equality of providing the needy, that is, the unequal, with specific, differentiated opportunities to learn how to compete, how to produce, how to trade?"

42. Part of the difficulties with the AoA spring from the fact that the framers of the Agreement sought to correct the situation of mounting production surpluses in a number of food products from developed countries, through rising domestic support and the use of export subsidies. This did not - and does not - necessarily correspond to the needs of other countries. Food-insecure developing countries in particular need to deal with inadequate production and lack of resources to raise agricultural productivity and food production in line with their needs and potential. The opening of markets in a manner that is conducive to the protection of human rights in fact requires a different form and pace, depending on the country in question. This requires an approach to trade rules that guarantees affirmative action for vulnerable individuals and groups. Without doing so, trade rules, including the AoA, risk creating a level playing field of unequal players. A human rights approach would consider the impact of trade liberalization not only on the need to minimize trade distortions, but also on different groups, in particular vulnerable people and groups, and set rules accordingly. In spite of the inclusion of several special and differential measures for developing countries, the AoA does not yet sufficiently take into account the highly varying levels of development of the agricultural sectors between countries and of the people whose livelihood depends on agriculture.[41]

43. Applying the human rights principle of non-discrimination to trade law encourages affirmative action for the poor. While non-discrimination is also a principle of international trade law there is a distinction in the application of the principle. "National treatment" envisages equal treatment for nationals and non-nationals - whether they are poor farmers or large agrobusiness or industrial firms. Treating unequals as equals is problematic for the promotion and protection of human rights and could result in the institutionalization of discrimination against the poor and marginalized. Under human rights law, the principle of non-discrimination does not envisage according equal treatment to everyone in all cases.[42] Affirmative action is necessary in some cases to protect vulnerable people and groups. While special and differential treatment under trade law is a positive step, the High Commissioner encourages the introduction of measures that go beyond longer transition times and "best endeavour" commitments and calls for targeted and enforceable treatment. In this context, the High Commissioner welcomes the commitment in the Doha Ministerial Declaration to make special and differential treatment an integral part of the rules and disciplines of the AoA so as to be operationally effective and to enable developing countries the flexibility to take into account food security and rural development objectives.

IV. CONCLUSIONS AND RECOMMENDATIONS

44. The High Commissioner recalls that, according to the Declaration on the Right to Development, States have a duty to formulate appropriate national development polices that aim at the constant improvement of the well-being of the entire population. In particular, the High Commissioner emphasizes that, as recognized by the FAO, provided domestic policies are in place to spread around the gains and to compensate the losers, then trade liberalization can play an important role in improving access to food.[43] While promotion of the right to food requires action primarily at the local and household levels, a balanced liberalization of agricultural trade that seeks affirmative action for the poor and vulnerable according to human rights principles and that leaves the appropriate flexibility to States to promote human rights in development is also important. The High Commissioner offers the following broad areas for action as possible ways to achieve a human rights approach to trade liberalization.

45. *Giving adequate consideration to human rights in trade rules.* The High Commissioner recalls the opinion of the CESCR that States have a responsibility "to ensure that in international agreements that the right to food is given adequate consideration". The High Commissioner notes that the norms and standards of human rights provide the legal framework for the protection of the social dimensions of trade liberalization as a complement to trade rules. In the context of the ongoing reform process under article 20 of the AoA, the High Commissioner encourages greater consideration to developing a legal framework for the social dimensions of the liberalization of agricultural trade through express reference in the AoA to the promotion and protection of human rights.

46. *Human rights impact studies.* States, in implementing and reviewing trade rules, are encouraged to consider the most appropriate mechanisms that on the one hand promote agricultural development, food security and the alleviation of poverty and on the other hand, are minimally trade distorting. The High Commissioner highlights the observation that an assessment of the impact of the AoA can only be made at the country level.[44] The High Commissioner encourages States to consider more closely the positive and negative impacts of agricultural trade liberalization on human rights - in particular the right to food and the right to development - and to raise the question of such studies in the Committee on Agriculture as part of the ongoing review of the AoA as mandated under article 20.

47. *Special and differential treatment targeted at vulnerable people and groups.* The AoA currently does not make a distinction between different types of agriculture - such as commercial agriculture or subsistence agriculture - and different players - from low-income and resource-poor farmers on the one hand, to national and international agrobusiness on the other. The High Commissioner draws attention to the fact that the right to development places the human person at the centre of development. A human rights approach to trade liberalization therefore focuses on protecting vulnerable individuals and groups - in particular, low-income and resource-poor farmers, as well as farm labourers and rural communities. In many cases, given that the majority of poor people are in developing countries, this could require special provisions for developing countries. However, any measures should be targeted so that special treatment is awarded to vulnerable people, but not to wealthy farmers or agrobusiness in poor countries. Leaving greater flexibility for developing countries to raise tariffs and grant domestic support can have positive effects for the enjoyment of human rights by resource-poor farmers and rural

populations while at the same time have relatively minor trade-distorting effects, given the relatively small impact of LDCs and net-food-importing countries on international trade. The High Commissioner also emphasizes that greater flexibility in liberalization commitments should be matched at the national level with strong emphasis on implementing poverty alleviation strategies that improve access by the poor to productive assets, land, technology and employment.

48. *Special and differential treatment that promotes food security.* There is solid evidence to suggest that measures targeted towards crops essential to ensure food security, as opposed to other food crops, is important in promoting the right to food. FAO has noted that "[d]evelopment experience over the last 50 years has amply demonstrated that vast rural poverty and food insecurity in developing countries had largely been the result of development strategies that overlooked the importance of the development of the agricultural sector, particularly the production of staple foods" - a good reason not to overlook them in international rules that affect domestic support.[45] Food-security crops are often cultivated for local consumption more than for export, which means that special measures targeted at such crops should improve food security at the national level, while remaining minimally trade distorting in world markets. Possible action could include allowing food-insecure States to enjoy a higher *de minimus* limit for trade-distorting domestic support for basic foodstuffs compared to non-food crops or non-food-security crops.[46]

49. *Operationalizing special and differential treatment for developing countries.* Both UNCTAD and FAO have recognized that one of the reasons for the "unsatisfactory" implementation of the Marrakesh Decision was the absence of adequate enforcement measures. The High Commissioner welcomes the Doha Ministerial Declaration and encourages the WTO member States to consider the possibilities of introducing operational mechanisms to support the implementation of the Decision. Operational mechanisms should include the allocation of rights and responsibilities to relevant actors; the creation of a centralized monitoring and enforcement mechanism with the duty to report annually on assistance given and received; a mechanism for reporting on national experiences that includes technical assistance for countries unable to monitor national experiences; the setting of realizable objectives for financial and technical assistance within specified time frames; and the development of human rights benchmarks and indicators.

50. *More targeted financing for development.* The High Commissioner underlines the importance of international cooperation to promote and protect human rights. In particular, the High Commissioner notes that, while increased flexibilities in trade rules will give many countries the space to implement policies to promote the right to food and the right to development, many countries lack adequate finance to do so. Thus, for example, while tariff measures might be revenue raising, domestic support requires finance and many countries might not be in the position to make adequate use of such flexibility. In this regard, the High Commissioner reiterates her call for developed countries to implement the commitment, made at the twenty-fourth special session of the General Assembly convened in 2000 in follow-up to the World Summit for Social Development, to meet the target of providing at least 0.7 per cent of GNP as official development assistance.[47]

51. *More targeted food aid.* The High Commissioner reminds States of article 11 of the International Covenant on Economic, Social and Cultural Rights which calls for international cooperation to ensure the distribution of world food supplies in relation to need, taking into account the problems of food-importing and food-exporting countries. The High Commissioner recognizes that international food aid at times responds to world food prices and can even be used as disguised export subsidies, and so emphasizes the importance of food aid being targeted and responsive to needs. To this end, the High Commissioner supports targeted food aid programmes such as food-for-work programmes.

52. *Fair trade liberalization.* The High Commissioner emphasizes the need for a just social and international order in the field of trade liberalization that seeks fair trade. The ambiguities existing in the AoA have allowed some OECD countries to over-estimate bound tariffs, set peak tariffs on "sensitive" goods and continue high levels of domestic support. Fair international trade rules should seek transparent rules that encourage implementation of the spirit, not only the letter of the AoA. Further, while the preamble to the AoA includes the objective of improving market access to developing countries, greater consideration could be given to elaborating the means for doing so. The High Commissioner therefore encourages the removal of structural imbalances in the AoA that favour wealthier countries over others. The High Commissioner also encourages more concerted efforts on behalf of OECD countries to reduce and remove distortions to trade - in particular export subsidies - given the inability of most other countries to offer similar protection for their populations. In this context, the High Commissioner welcomes the commitment in the Doha Ministerial Declaration to substantial improvements in market access and reductions of all forms of export subsidies with a view to phasing them out, and encourages the explicit inclusion of this commitment in the rules and disciplines of the AoA.

53. *Accession negotiations.* It is also important that countries currently negotiating accession to the WTO maintain the full special and differential treatment open to developing countries and be able to maintain the flexibility that many WTO agreements allow. Countries involved in accession talks should ensure that such preferences are not negotiated away. Some smaller or poorer countries can be in a vulnerable position in accession negotiations. The general comment of the CESCR notes that States also have a responsibility to respect the right to food in other countries. The High Commissioner reminds States of the general responsibility to respect human rights in other countries and encourages WTO members to negotiate in ways that would enable acceding countries to respect, protect and fulfil the human rights of their own people.

54. *Further substantive work.* The High Commissioner encourages further research to develop human rights approaches to the liberalization of agricultural trade. In particular, the High Commissioner encourages further substantive work on the following areas: a clarification of the human rights principle of non-discrimination as it relates to WTO trade rules, including the principles of national treatment and most-favoured-nation treatment; the development of mechanisms for special and differential treatment that is targeted at vulnerable individuals and groups but not wealthy farmers and agrobusiness; the development of mechanisms for allowing effective and minimally trade-distorting protection of food security crops in food-insecure countries; the drafting of guidelines for the provision of food aid that is responsive to need rather than world food prices; and the development of operational mechanisms for the Marrakesh Decision, including the setting of objectives, time frames, benchmarks and indicators and the identification of responsibility holders and beneficiaries.

Notes

[1] *Report of the United Nations Conference on Trade and Development, on its Tenth Session*, Bangkok, 12-19 February 2000 (TD/390), paras. 129, 133.

[2] Programme of Action for the Least Development Countries adopted by the Third United Nations Conference on Least Developed Countries, Brussels, 14-20 May 2001 (A/CONF.191/11), paras. 57, 62, and 65.

[3] World Food Summit Plan of Action adopted by the World Food Summit, Rome, 13-17 November 1996, commitment 7, objective 7.4 (e), para. 16. Commitment 7 states "We will implement, monitor and follow-up this Plan of Action at all levels in cooperation with the international community". Objective 7.4 (e) invites "the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, to better define the rights related to food in article 11 of the [International Covenant on Economic, Social and Cultural Rights] and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all".

[4] China became a member on 11 December 2001 and Chinese Taipei on 1 January 2002.

[5] Vienna Declaration and Programme of Action of the World Conference on Human Rights (A/CONF.157/23), Part I, para. 1.

[6] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, "Agriculture in the GATT: a historical account", Part I, module 4.

[7] See AoA, art. 4.

[8] Each country specifies binding access commitments in individual country Schedules to the AoA.

[9] There is, however, under article 9 (4) of the AoA, a provision allowing special and differential treatment for developing country WTO members to provide some forms of export subsidies during the implementation period of the Uruguay Round results.

[10] See AoA, art. 9 (2) (a) and (b).

[11] AoA, art. 15.

[12] AoA, arts. 6 and 9 (4).

[13] Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on the Least-Developed and Net Food-Importing Developing Countries. See also AoA, art. 16.

[14] Declaration adopted at the fourth WTO Ministerial Conference, Doha, 9-14 November 2001, para. 13.

[15] UNCTAD, Impact of the reform process in agriculture on LDCs and net-food-importing developing countries and ways to address their concerns in multilateral trade negotiations (TD/B/COM.1/EM.11/2 and Corr.1), background note by the UNCTAD secretariat, July 2000. With regard to the Marrakesh Decision, UNCTAD has described its implementation as "unsatisfactory". This is so principally for three reasons: first, the Decision has no operation mechanism for carrying out the support measures specified in it; second, there has been no attempt within the WTO framework systematically to estimate the impact of the implementation of the AoA on LDCs and net-food-importing developing countries; and third, there have been few country-specific impact studies of the AoA during the WTO's monitoring of the Decision. UNCTAD has also noted that LDCs and net-food-importing developing countries experienced increases in food bills and reductions in food aid between 1995 and 1999 and concluded that the ability of these countries to deal with increased food bills remained bleak (see TD/B/COM.1/EM.11/2, paras. 25 ff).

[16] OECD, *The Uruguay Round Agreement on Agriculture: An Evaluation of its Implementation in OECD Countries*, OECD, Paris, 2001. On market access, the OECD report notes tariff peaks on some agricultural products exceeding 200 per cent. UNCTAD also notes that the tariff reduction approach in the AoA lets countries undertake uneven tariff reductions across products, allowing prohibitively high tariffs to be maintained on "sensitive" products - in particular, tariffs on major export products of developing countries such as sugar, tobacco and cotton are frequently levied at peak rates exceeding 200 per cent (see also TD/B/COM.1/EM.11/2, para. 16).

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] TD/B/COM.1/EM.11/2, paras. 12, 14 and 36.

[21] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 1, "Domestic support measures".

[22] World Food Programme, Examining food aid, speaking notes for the FAO Round Table on Selected Issues, in Particular Food Aid, in the Context of the WTO Negotiations on Agriculture, Geneva, 30 November 2001.

[23] FAO, "Food aid in the context of the WTO negotiations on agriculture", discussion paper prepared by the FAO secretariat for the Geneva Round Table, ibid., p. 5 and table 3.

[24] South Centre, *Market Power in Agricultural Markets: Some Issues for Developing Countries*, Trade-Related Agenda, Development and Equity Working Papers No. 6, 1999, p. 2.

[25] FAO, Mobilizing resources to fight hunger, Committee on World Food Security, twenty-seventh session, Rome, 2001.

[26] Ibid.

[27] OECD, op. cit.

[28] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 10, "Trade and food security: options for developing countries".

[29] D. Ben-David, H. Nordstrom and L.A. Winters, *Trade, Income Disparity and Poverty*, WTO Special Study No. 5, Geneva, 2000.

[30] FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries*, vol. II, Country Case Studies, FAO Commodities and Trade Division, Rome, 2000, p. 25. The report also gives the example of Brazil where the agricultural sector has been transformed as a result of the reform process. In the dairy sector, farm sizes are increasing and herds improving with large-scale firms moving in to replace traditional cooperatives. The study notes, however, that the solution is not to shrink from the reform process, but rather to improve safeguards for rural populations and small farmers such as by establishing new credit institutions and reforming contract law to protect small farmers in the face of large agricultural companies.

[31] Ibid.

[32] Ibid., p. 167.

[33] Ibid.

[34] WTO, The Effects of the Reduction Commitments on World Trade in Agriculture, statistical background paper by the secretariat (G/AG/NG/S/11/Add.1), Committee on Agriculture, 24 July 2000, table 6.

[35] Ibid., pp. 22-24. For example, a reduction in export subsidies according to the AoA commitments could raise world market prices and therefore increase import bills. Similarly, the implementation of the AoA in the importing country, for example through lowering tariffs, could also attract greater imports in spite of world food price levels.

[36] Ibid., p. 25. FAO country studies noted that in India, food prices rose faster than other consumer prices after 1991 and offers this as a possible explanation of why poverty rates had failed to decline since 1991, despite faster economic growth. The case study considered that price stability is an important element in protecting the welfare of the poor.

[37] FAO, Food security in the context of the WTO negotiations on agriculture, discussion paper 2 prepared for the Geneva Round Table, op. cit., box 1.

[38] P. Pinstrup-Andersen, Rajul Pandya and Mark W. Rosegrant, *The World Food Situation: Recent Developments, Emerging Issues and Long-Term Prospects*, The International Food Policy Research Institute, 20/20 Vision, Washington, DC, 1997, pp. 14 ff.

[39] FAO has noted that significant progress in promoting economic growth, reducing poverty and enhancing food security cannot be achieved in most cases without developing more fully the potential capacity of the agricultural sector and enhancing its contribution to overall economic development. FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries*, vol. II, Country Case Studies, op. cit., p. 5.

[40] Ibid.

[41] The AoA does provide flexibility that could accommodate States' responsibilities to promote and protect human rights (see, for example, articles 6 (2), 6 (4) (a) and (b), 9 (4), 11 and 12 (2)). In relation to market access, the AoA includes the special safeguard provision that allows some countries to take action against import surges. While many developing countries cannot benefit from this safeguard, many of these countries generally apply low tariffs and therefore still have substantial room to raise tariffs in accordance with their AoA commitments (WTO, *Market Access: Unfinished Business - Post Uruguay Round Inventory* (Special Study No. 6), p. 52. In particular, see table III.5 which shows, for example: Bangladesh, simple average bound tariff rate 188.3 with the 1999/2000 applied rate at 25.1, compared with the simple average bound tariff rate for Japan at 25.3 with the 1996 applied rate at 26.3). In relation to domestic support measures, the AoA allows developing countries to continue providing support for certain development measures, including measures to protect low-income and resource-poor farmers (AoA, art. 6). For export subsidies, the Agreement allows special and differential treatment for developing and least developed country members to grant marketing cost subsidies and internal transport subsidies, provided that they are not applied in such as way that would circumvent other export subsidy commitments (AoA, art. 9 (4)). Nonetheless, while there is some flexibility in the AoA that leaves States room to develop policies to promote human rights, there are still areas of tension that need resolution. Even the flexibility outlined above is not available to all countries. For example, while the special safeguard provision offers flexibility to avoid or to remedy the effects of import surges, it is only open to those members that undertook tariffication. Most developing country members bound their tariffs at ceiling rates and did not undertake tariffication, and so these countries do not have access to the provision. Consequently, in the case of import surges, while some countries could take the necessary action to guarantee the right to food, others would not have this option. While some developing countries have high bound ceiling rates that offer them flexibility when setting tariffs in the case of import surges, others have bound rates at zero levels and so enjoy no flexibility at all. In relation to domestic support, developing countries that claimed zero commitments are limited in the level of domestic support they can award in the future, while many developed countries that made extensive claims for the base period now have the legal right to continue doing so (TD/B/COM.1/EM.11/2, op. cit., para. 44).

[42] The principle of non-discrimination is one of the foundations of human rights law and could be said to be a point of departure in discussions on human rights and trade. In trade law, the principle of non-discrimination is included in the principles of national treatment and most-favoured-nation treatment. According to human rights law, States undertake to guarantee that rights will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (see common article 2 of the International Covenants on Human Rights). However, under human rights law, the principle of non-discrimination does not imply equal treatment in every instance. Non-discrimination under human rights law sometimes requires affirmative action to diminish or eliminate the conditions preventing the enjoyment of human rights of part of the population (see Human Rights Committee, General Comment No. 18, 1989, paras. 8 and 10).

[43] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 10, op. cit.

[44] TD/B/COM.1/EM.11/2, op. cit., para. 9.

[45] FAO, discussion paper 2 for the Geneva Round Table, op. cit.

[46] TD/B/COM.1/EM.11/2, op. cit., para. 46.

[47] General Assembly resolution S-24/2 of 1 July 2000.

Annex

This annex sets out a basic outline of the AoA rules that concern market access and domestic support, as well as the four elements of the Marrakesh Decision.

Market access

The three market access elements include the binding of tariffs, minimum market access opportunities, as well as a special safeguard provision in the case of food import surges.

(a) *Tariff binding.* As part of the process of capping tariff levels - **tariff binding** - the AoA required members to convert agriculture-specific non-tariff measures into tariffs. This process - known as **tariffication** - resulted in a total tariff figure that was then capped - or bound - on the basis of 1986-1988 levels.[a] This generally resulted in a higher - sometimes significantly higher - level of tariffs. However, each State then committed to reduce this total figure. Instead of tariffication, developing countries had the option of binding tariffs at levels higher than the rate actually used. These States then committed themselves to maintaining tariffs at or below this figure.[b]

(b) *Minimum market access.* The fear that the tariffication process would temporarily raise tariffs and obstruct market access led to the introduction of minimum quotas, whereby members agreed to maintain current opportunities to import agricultural goods - according to the 1986-1988 import levels - and, where necessary, offer additional market access opportunities. This means lower tariffs within the quotas and higher rates for quantities outside the quotas.

(c) *Special safeguard provision.* The provision allows members to guard against international price fluctuations allowing the application of additional tariffs in the case of import surges.[c] A price surge or a volume surge will trigger the provision. This provision is the third element of the tariffication package and can only be invoked with respect to "tariffied" products - in other words, only those members that undertook the tariffication process are able to benefit from the provision.

Domestic support

The AoA includes areas where domestic support need not be reduced - green box, blue box, development measures and the *de minimis* level of support. The amber box is subject to reduction commitments.

(a) *Green box measures.* The green box includes measures deemed to have minimal or no impact on trade and are divided into two main groups: direct payments to producers that are not linked to production decisions, and government service programmes. Such measures include, for example, Government-funded agricultural research, pest and disease control programmes, agricultural training and advisory services, domestic food aid, disaster relief and so on.[d] The outlays for green box measures can be increased by members without limitation.

(b) *Blue box measures*. The blue box includes certain domestic support in the form of direct payments to producers under production-limiting programmes relevant mainly for certain European countries.

(c) *Development measures*. The AoA also does not require reductions in certain development measures of developing countries designed to encourage agricultural and rural development and that are an integral part of development programmes.[e] Measures in this category include investment subsidies generally available to low-income or resource-poor producers, input subsidies generally available to low-income or resource-poor farmers, and investment support to producers in developing countries to encourage diversification from growing illicit narcotic crops.

(d) *De minimis level of support*. The *de minimis* level of support sets a minimum level of permissible trade-distorting domestic support. There are two minimum levels below which such domestic support is permissible: one is product specific, the other is not specific to any product in particular. First, the *de minimis* level includes any domestic support for a particular product if that support is not greater than 5 per cent of the total value of production of the particular agricultural product. Second, the *de minimis* level includes all non-product-specific support that is less than 5 per cent of the value of total agricultural production - in other words, over all products. Thus, the AoA allows trade-distorting domestic support in these two areas, up to this level. For developing countries, the *de minimis* ceiling is 10 per cent in both cases.

(e) *Amber box*. All other domestic support falls within the "amber" box which means it has to be reduced. The sum of expenditures on non-exempted domestic support is known as the total aggregate measure of support (AMS). Under the Agreement, members had to calculate and notify their base (1986-1988) total AMS, which was then capped. Members agreed to reduce domestic support from these levels.

Special and differential treatment

The Marrakesh Decision includes four elements as follows:

(a) *Food aid*. The Decision expresses concern that the implementation of the AoA might adversely affect the availability of food aid in sufficient amounts.[f] It addresses three issues. First, ministers agreed to review the level of food aid established by the Committee on Food Aid under the Food Aid Convention. Next, ministers agreed to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries. Finally, ministers agreed to adopt guidelines on the provision of food aid.

(b) *Agricultural export credits*. Ministers agreed that any agreement on export credits, as mandated under article 10 of the AoA, should ensure differential treatment for least developed and net-food-importing countries.

(c) *Financing facilities.* Ministers reiterated that least developed and net-food-importing countries may draw on financial facilities, "or such facilities as may be established" to finance normal levels of commercial imports. The IMF, for example, has a Compensatory and Contingency Financing Facility.

(d) *Technical and Financial Assistance under Aid Programmes.* Ministers also agreed to give full consideration to requests from least developed and net-food-importing countries to provide technical and financial assistance to improve their agricultural productivity and infrastructure in the context of their aid programmes.

Notes

[a] For developed country members, tariffication applied to not more than 20 per cent of all agricultural tariff lines although this included many "sensitive" products. For developed country members, this percentage is even smaller.

[b] An FAO study demonstrates that many developing countries have ceiling rates considerably higher than their applied tariff rates. There were several reasons for this, however; importantly, it gives those countries some flexibility to set higher tariffs where necessary for food security or development reasons. There are nonetheless some other cases, such as India, which has bound levels for tariffs at 0 for certain sensitive products - in the context of food security - such as rice. See FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Development Countries*, vol. II, Country Case Studies, FAO Commodities and Trade Division, Rome, 2000, pp. 6 ff.

[c] AoA, art. 5.

[d] See AoA, annex 2, for a full list of green box measures.

[e] AoA, art. 6.

[f] Marrakesh Decision, para. 3.